



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

FF

Introduction

This is the Tenant's application for a Monetary Order for double the security deposit from the Landlord and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she mailed the Notice of Hearing documents to the Landlord at his address, via registered mail, on October 8, 2010. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. The Tenant testified that the documents were returned to her, unclaimed, on or about November 7, 2010. The Tenant testified that she served the Landlord personally with the Notice of Hearing documents and copies of her evidence on November 7, 2010, with a witness present.

Based on the affirmed testimony and documentary evidence provided, I am satisfied that the Landlord was served in accordance with the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents, whether or not the recipient chooses to accept service. In any event, when the documents were returned to the Tenant, she immediately served the Landlord the documents in accordance with the provisions of Section 89(1)(a) of the Act. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing continued in his absence.

Issue(s) to be Decided

- (1) Is the Tenant entitled to a monetary order under Section 38(6) of the Act?

Background and Evidence

Tenant's evidence

The Tenant provided the following evidence, orally and in her evidence package:

- On August 25 or 26, 2010, the Tenant provided the Landlord a security deposit in the amount of \$600.00. The Tenant provided a copy of the receipt in evidence.
- The Tenant and her husband met with the Landlord on August 29, 2010, to sign the tenancy agreement.
- The Landlord told the Tenant he would require first and last month's rent. The Tenants advised the Landlord that there was no provision in the Act for a Landlord to collect first and last month's rent from a Tenant at the beginning or a tenancy. The Landlord told the Tenants that if they did not pay first and last month's rent, they could find somewhere else to live.
- On September 23, 2010, the Tenant provided the Landlord with a letter including her forwarding address and asking for return of the security deposit. A copy of the letter was entered in evidence.
- The Landlord has not returned the security deposit.

Analysis

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord **must** repay any security deposit or pet damage deposit to the tenant with interest, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the affirmed testimony and documentary evidence provided by the Tenant, and in the absence of contradictory evidence from the Landlord, I am satisfied that the Landlord received written notification of the Tenant's forwarding address on September 23, 2010. The Landlord has not returned any of the security deposit or filed an Application against the security deposit. Therefore, in accordance with the provisions of Section 38(6) of the Act, I find that the Tenant is entitled to a monetary award in the amount of \$1,200.00.

The Tenant has been successful in her application and is entitled to recover the filing fee from the Landlord.

I grant the Tenant a Monetary Order in the amount of \$1,250.00 against the Landlord.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of \$1,250.00 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 13, 2010.
