



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit. The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail to the Landlord’s residence on September 15, 2010 and that the Landlord received it on October 1, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

At the beginning of the hearing, the Tenant and her advocate said they had not received a copy of an evidence package submitted by the Landlord to the Residential Tenancy Branch. While I find that the Tenant has not been served with these documents, I also find that there is no prejudice to her in admitting those documents that are relevant as evidence. However, the majority of the documents and written submissions deal with the Landlord’s assertion that she has a claim against the Tenant for unpaid utilities and other expenses. The Landlord did not file an application for dispute resolution to make a claim for those expenses and as a result I find that those parts of the evidence package are irrelevant and inadmissible.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit and if so, how much?

Background and Evidence

This tenancy started on July 1, 2008 and ended on July 31, 2010 when the Tenant moved out. Rent was \$500.00 and the Tenant paid a security deposit of \$250.00 at the beginning of the tenancy.

The Tenant said she gave the Landlord her forwarding address in writing on August 13, 2010 by registered mail. In a copy of a letter dated August 26, 2010 provided by the Landlord as evidence at the hearing, the Landlord admitted that she received the Tenant’s forwarding address in writing. The Tenant said she did not give the Landlord written authorization to keep her security deposit and the Landlord has not returned it.



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Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Consequently, I find that the Landlord received the Tenant's forwarding address in writing on August 18, 2010 but did not return her security deposit. I also find that the Landlord did not have the Tenant's written authorization to keep the security deposit and did not make an application for dispute resolution to make a claim against the deposit. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit (\$500.00) to the Tenant with accrued interest of \$1.89 (on the original amount).

RTB Policy Guideline #17 at p. 2 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." Although the Tenant applied to recover only the original amount of the security deposit on her application, she indicated at the hearing of this matter that she was seeking to recover double the amount of the deposit. Consequently, I find that the Tenant has made out a monetary award for \$501.89.

Conclusion

A Monetary Order in the amount of **\$501.89** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 12, 2011.

Residential Tenancy Branch