



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: MNSD

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double her security deposit.

The Tenant stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the Landlord on November 09, 2010 and that he returned them to her when he mailed her a cheque for \$300.00, which she received on November 10, 2010. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing. This hearing was conducted in the absence of the Landlord.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy.

Background and Evidence

The Tenant stated that she moved into the rental unit on September 01, 2007; that the rental unit is a free standing structure that is located on the same property as the Landlord's residence; that she paid a security deposit of \$300.00 on August 23, 2007; that this tenancy ended on August 31, 2010; that the Tenant did not authorize the Landlord to retain the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she verbally advised the Landlord of her new address at the end of the tenancy and that she sent him a letter which contained her forwarding address on October 01, 2010, via registered mail. She cited a Canada Post tracking number which corroborated that statement. She stated that she checked the Canada Post website and determined that the Landlord picked up this registered mail on October 07, 2010.

The Tenant stated that the Landlord sent a cheque, in the amount of \$300.00, and copies of the Tenant's Application for Dispute Resolution to her mail box sometime after he had been served with the Tenant's Application for Dispute Resolution. She stated that she received the cheque on November 10, 2010.

Analysis

On the basis of the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that the Tenant paid a security deposit of \$300.00; that the Landlord returned \$300.00 of the security deposit on November 10, 2010; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that this tenancy ended on August 31, 2010 and that the Tenant mailed her forwarding address to the Landlord on October 01, 2010, which is deemed to have been received on October 06, 2010.

Section 38(1) of the *Act* stipulates 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 either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord did not repay the security deposit until November 10, 2010 and he did not file an Application for Dispute Resolution. To comply with section 38(1) of the *Act*, the Landlord would have had to return the security deposit by October 21, 2010.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1), I find that the Landlord must pay the Tenant double the security deposit that was paid, plus interest of \$6.14.

Conclusion

I find that the Tenant has established a monetary claim of \$606.14, which is comprised of double the security deposit plus \$6.14 in interest. I find that this claim must be reduced by the \$300.00 that was returned by the Landlord on November 10, 2010.

On the basis of these calculations, I find that the Tenant is entitled to a monetary Order of \$306.14 and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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 20, 2011.

Residential Tenancy Branch