



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenant's application for a Monetary Order for double the security deposit from the Landlord. The Tenant gave affirmed evidence at the Hearing.

The Tenant testified that he attempted to serve the Landlord with the Notice of Hearing documents at the Landlord's residence (the rental unit), on October 27, 2010, but that the Landlord was not residing there. The Tenant believed the Landlord was living in the rental unit because the Tenant had been served with a Notice to End Tenancy for Landlord's Use in July, 2010, because the Landlord intended to move into the rental unit. The Tenant referred to a previous Dispute Resolution Decision, dated September 3, 2010, in support of this.

The Tenant testified that he spoke with the current tenant at the rental unit, who advised him of the Landlord's address. The address was the same address for service that the Landlord had given the Tenant during the tenancy. The Tenant testified that he mailed the Notice of Hearing documents to that address, via registered mail, on December 14, 2010. The Tenant testified that the documents were returned to the Tenant, unclaimed.

Based on the evidence provided by the Tenant, and under the provisions of Section 71(2)(b) of the Act, I am satisfied that the Landlord was sufficiently served with the Notice of Hearing documents for the purposes of this Hearing, by registered mail. Section 90 of the Act deems service in this manner to be effected 5 days after the documents are mailed (in this case, December 19, 2010), whether or not the recipient

chooses to accept delivery. Despite being served, the Landlord did not sign into the teleconference and the matter continued in his absence.

Issue(s) to be Decided

Is the Tenant entitled to a monetary award pursuant to the provisions of Section 38(6)(b) of the Act?

Background and Evidence

The Tenant gave the following testimony:

The Tenant paid a security deposit in the amount of \$375.00 in June, 2009, at the beginning of the tenancy. There was a written tenancy agreement, but the Landlord did not give the Tenant a copy of the agreement. The Landlord did not arrange for a Condition Inspection Report to be completed at the end of the tenancy. The Tenant provided the Landlord's agent with his forwarding address in writing on September 30, 2010. The Landlord has not returned any of the security deposit. The Tenant did not give the Landlord permission to retain any of the security deposit.

Analysis

A security deposit is held in a form of trust by the Landlord and is to be administered at the end of the tenancy in accordance to the provisions of Section 38 of the Act. 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 to the tenant with interest, or make an application for dispute resolution claiming against the security deposit.

I accept the undisputed testimony of the Tenant that he provided the Landlord's agent with his forwarding address in writing on September 30, 2010, which was the date the

tenancy ended. I accept the Tenant's undisputed testimony that the Landlord has not returned any of the security deposit.

Section 38(6)(b) 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. Therefore, I find that Tenant is entitled to a compensation in the amount of \$750.00, pursuant to the provisions of Section 38(6)(b) of the Act.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of \$750.00 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: March 04, 2011.
