

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 provided affirmed testimony at the Hearing.

The Tenant testified that she mailed the Notice of Hearing documents, by registered mail on November 5, 2010, to two addresses:

- The address for service of the Landlord, as noted on the tenancy agreement; and
- The rental unit, addressed to the Landlord.

The Tenant testified that both document packages were returned to her, unclaimed.

The Tenant provided a copy of the tenancy agreement, the registered mail receipts and the Canada Post Tracking information in evidence.

I find that the Tenant served the Landlord with the Notice of Hearing Package in accordance with the provisions of Section 89(1)(c) of the Residential Tenancy Act (the "Act") by sending the documents by registered mail, to the address at which the Landlord carries on business (the address for service noted on the tenancy agreement). Service in this manner is deemed to be effected 5 days after mailing the documents, whether or not the recipient chooses to accept delivery. In spite of being served with the documents, the Landlord did not appear at today's Hearing and the Hearing proceeded in his absence.

Issue(s) to be Decided

Is the Tenant entitled to a monetary award for double the security deposit, pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The tenancy ended on September 30, 2010. The Tenant paid a security deposit to the Landlord in the amount of \$825.00 on June 15, 2009.

On September 30, 2010, the Tenant provided the Landlord notice of her forwarding address by:

- Leaving a letter in the mail box at the rental unit, addressed to the Landlord. The Tenant testified that this was a method of communication between the parties during the tenancy.
- E-mailing the Landlord. The Landlord did not respond to the e-mail.
- Text messaging the Landlord. The Landlord replied to the text message the same day, indicating that he would return the security deposit and wishing the Tenant good luck.

The Tenant did not agree that the Landlord could retain any of the security deposit at the end of the tenancy. There have been no previous Orders with respect to disposition of the security deposit.

The Landlord did not return the security deposit within 15 days of the end of tenancy or the Landlord's receipt of the Tenant's forwarding address by text message. The Landlord did not make an application claiming against the security deposit or pet damage deposit within 15 days of the end of tenancy or the date the Tenant provided the Landlord with notification of her forwarding address.

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.

Section 88 of the Act provides the following methods of serving or giving documents that are required to be given or served:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

There is no provision in the Act or regulations for provision of documents by way of e-mail or text messaging. The Tenant did not leave the letter in the mailbox where the Landlord carries on business as a landlord. Therefore, I find that the Tenant did not establish that she gave the Landlord her forwarding address in accordance with the provisions of the Act and is not entitled to double the amount of the security deposit.

Based on the testimony and documentary evidence of the Tenant, I find that the Tenant is entitled to return of the security deposit of \$825.00. The Tenant is required to serve the Landlord with the enclosed Monetary Order. I order that the Landlord pay this amount to the Tenant within 15 days of receipt of the enclosed Monetary Order.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of \$825.00 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 18, 2011.
