



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on March 08, 2011 to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number and copy of the envelope indicating the mail had been unclaimed was provided as evidence of service.

The tenant stated that the tenancy ended on January 31, 2011, after the landlord issued him a 2 Month Notice ending tenancy for landlord's use as the landlord was going to reside in the rental unit. Therefore, the tenant served the landlord at the rental unit address.

I accept the tenant's affirmed testimony that the landlord issued a notice ending tenancy as the landlord was going to reside in the rental unit and that the landlord did so. A failure to claim registered mail does not allow a party to avoid service. Therefore, these documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Background and Evidence

The tenancy commenced in August 2010 and ended on January 31, 2011. A security deposit in the sum of \$600.00 and a pet deposit of \$300.00 were paid at the start of the tenancy.

A condition inspection was completed on January 31, 2011, but the tenant refused to sign the document and did not provide his forwarding address at the time.

The tenant read from several email communications he had with the landlord. At 11:57, on February 14, 2011, the landlord emailed the tenant and told him he had yet to receive the tenant's forwarding address. The tenant was given a copy of the condition inspection report. At 12:57 on February 14, 2011, the tenant responded to the landlord and gave him the forwarding address.

On February 18, 2011, the tenant emailed the landlord again and attached a copy of the condition inspection report in which the tenant indicated he did not agree with the landlord's claim against the deposit; the tenant again gave the landlord his forwarding address.

On February 21, 2011, the landlord responded to the tenant by listing damages to the unit and amounts the landlord believed the tenant owed for damages. No further email communication occurred between the parties.

The tenant has yet to receive return of his deposits paid and agrees that the landlord is entitled to retain \$100.00 for damage. The tenant does not wish to receive double his deposits.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit; however, the tenant has waived this right.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there may be a dispute in relation to damages, but there is no evidence before me that the landlord has claimed against the deposits.

I find that the landlord was served with the tenant's forwarding address, no later than February 21, 2011, when the landlord responded to the tenant's February 18, 2011 and February 14, 2011, emails. Based upon the affirmed testimony of the tenant, who read from copies of email communication between he and the landlord, I find that the tenant and landlord communicated via email and that, pursuant to section 72(b) of the Act that the forwarding address was sufficiently served in writing to the landlord.

There is no evidence before me that the deposits have been returned; therefore, I find that the tenant is entitled to return of the security and pet deposits in the sum of \$900.00; less \$100.00 as agreed to by the tenant.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$800.00, which is comprised of the balance of the pet and security deposits held in trust by the landlord.

The tenant agreed that the landlord should retain \$100.00 of the \$900.00 in deposits paid.

Based on these determinations I grant the tenant a monetary Order for \$800.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: June 16, 2011.

Residential Tenancy Branch