



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This is the Tenant's application for a return of the security deposit paid to the Landlords and to recover the cost of the filing fee from the Landlords.

The Tenant provided affirmed testimony at the Hearing.

The Tenant testified that on May 26, 2011, she mailed the Landlords, by registered mail, the Notice of Hearing documents. She addressed the envelope to both Landlords and did not send separate envelopes to each Landlord. The Tenant provided a copy of the registered mail receipt and tracking number along with the Canada Post printout indicating the scanned delivery date and signature of the Landlord CC.

Based on the Tenant's testimony and documentary evidence provided, I am satisfied that the Landlord CC was duly served with the Notice of Hearing documents pursuant to the provisions of Section 89(1)(c) of the Act. Despite being served with the documents, the Landlord CC did not sign into the teleconference and the Hearing proceeded in his absence.

The Tenant did not provide sufficient evidence that the Landlord EC was served with the Notice of Hearing documents and therefore her application against the Landlord EC is dismissed.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenant gave the following testimony:

- The Tenant paid a security deposit in the amount of \$500.00 on November 16, 2010.
- The tenancy ended on March 31, 2010.

- The Tenant provided the Landlords with written notification of her forwarding address at the end of the tenancy.
- No move out condition inspection was conducted at the beginning or the end of the tenancy.
- The Tenant did not agree that the Landlords could keep any of the security deposit at the end of the tenancy.
- There have been no previous Orders made with respect to the security deposit.
- The Landlords have not returned any of the security deposit to the Tenant.

Analysis

Section 38(1) of the Act provides that (unless the Tenant agrees in writing that the Landlord may retain any or all of the security deposit) 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.

I accept the Tenant's undisputed testimony that she provided her forwarding address in writing to the Landlords at the end of the tenancy. The Tenant did not agree in writing that the Landlord could retain any of the security deposit. The Landlord did not file an application against the security deposit, or return the full amount of the security deposit within 15 days of the end of the tenancy.

Section 38(6) of the Act provides that, unless a tenant specifically waives her right to double the amount of the security deposit, 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.

I advised the Tenant of the provisions of Section 38(6) of the Act, and she stated that she did not want double the amount of the security deposit. She stated that she only wanted a monetary award for the amount of the security deposit. Therefore, I award the Tenant only the amount she has claimed. No interest has accrued on the security deposit.

The Tenant has been successful in her application and is entitled to recover the cost of filing fee from the Landlord CC.

I hereby provide the Tenant with a monetary order in the amount of \$550.00 against the Landlord CC.

Conclusion

The Tenant's application against the Landlord EC is dismissed.

I hereby provide the Tenant a monetary order for **\$550.00** for service upon the Landlord CC. This order 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: August 31, 2011.

Residential Tenancy Branch