



Dispute Resolution Services

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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 and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on June 1, 2011, to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The tenant was asked to provide a copy of the receipt and envelope that showed the landlord had refused to accept this mail. This evidence was submitted as requested.

Service may not be avoided by refusing to accept registered mail. These documents are deemed to have been served on the fifth day after mailing, 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?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 15, 2006, when a deposit in the sum of \$647.50 was paid. There was no written tenancy agreement. No condition inspection reports were completed.

The tenant gave Notice to vacate the unit on July 31, 2010. The keys were returned to the landlord on August 1, 2010 and the basement storage key was given to the landlord on August 6, 2010, at which time the tenant provided his written forwarding address to the landlord.

The tenant sent the landlord a letter dated November 28, 2010; this was served by registered mail. The mail was refused. The letter outlined the attempts the tenant had made to receive his deposit, calls made to the landlord on October 6 and 7, 2010 and a request the deposit be returned within 14 days of receipt of the letter.

In December, 2010, the tenant spoke with the landlord who confirmed she remained at the mailing address used; the same address where the tenant had mailed his rent cheques throughout the tenancy.

The landlord has not returned the deposit.

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.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that that landlord has repaid the deposit as requested in writing by the tenant, by no later than December 3, 2010, when I find the registered mail, requesting return, was deemed served to the landlord. Refusing registered mail does not allow a party to avoid service of documents.

Therefore, I find that the tenant is entitled to return of double the \$647.50 deposit paid, plus accrued interest in the sum of \$21.99.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,366.99, which is comprised of double the \$647.50 deposit, interest of \$21.99 and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$1,366.99. 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: September 07, 2011.

Residential Tenancy Branch