



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an application by the tenant for recovery of double the security deposit and pet damage deposit and the filing fee. At the hearing the tenant, QK, was affirmed and testified that he accompanied his assistant, MB, on June 29, 2011 to hand serve the Notice of Hearing, Application for Dispute Resolution, and his evidence to the Landlord.

MB affirmed and testified that on June 29, 2011 she served the hearing documents and evidence to the receptionist for the landlord at the landlord's office address, as listed on the Application for Dispute Resolution. The tenant confirmed that he attended and saw the service of the hearing documents along with the evidence. I accept that the documents were served on the landlord in accordance with Section 89 of the *Residential Tenancy Act* (the *Act*).

Despite having been served the Notice of Hearing and Application for Dispute Resolution in accordance with the *Act*, the landlord did not attend the hearing.

Issue(s) to be Decided

1. Is the tenant entitled to double recovery of the security deposit and/or pet deposit?
2. If so, is the tenant entitled to his filing fee?

Background and Evidence

The tenancy began on March 01, 2011. The tenant paid a security deposit of \$612.50 on February 28, 2011 and a pet damage deposit of \$612.50 on March 01, 2011. The tenancy ended on April 30, 2011.

The tenant testified that he emailed the landlord his written request for return of his security deposit and pet deposit in the body of an email, but he does not recollect the

date of that email, nor did he provide a copy of that email in his evidence. The Tenant confirmed that he had submitted a document that had been reprinted as his evidence that he had provided the landlord with his forwarding address on April 28, 2011. The tenant confirmed that he had not provided any other written request for the return of his deposits to the landlord.

The tenant testified that he went to the landlord's office on May 17, 2011 to try to obtain his deposits in person. He claims that the landlord advised him that they had sent a cheque for the pet deposit to an incorrect address. The tenant stated that he waited at the landlord's office that day until the landlord gave him a cheque for return of the pet deposit in the amount of \$612.50.

The Tenant indicated in the hearing that he is claiming \$612.50 for the security deposit, and a doubling of the amount of the security deposit and the pet deposit (\$1225.00), along with his filing fee (\$50.00). This amount does not match the \$1,875.00 claimed for on the application for Dispute Resolution.

The tenant has requested that the Dispute Resolution decision be left for him to pick up in the Burnaby Residential Tenancy Branch Office as he is currently moving and cannot provide a current address at this time.

Analysis

The burden of proving a claim lies with the person making the claim and when contradictory evidence is presented that burden of proof is not met. The applicant claims that he e-mailed his forwarding address to the landlord and that the address was contained in the body of the e-mail, which he did not have a copy of as he had deleted the e-mail. However, in his documentary evidence the tenant provided a typed document which advises the landlord of his forwarding address. It is indicated on this document that the copy provided in evidence is a "reprint". At the bottom of this document it is noted "(Hand delivered April 29)".

Based on the aforementioned contradictory information I find the Tenant has not met the burden of proof to establish when and how his forwarding address was provided to the landlord in writing.

The tenant has applied for the return of double his security and pet deposit; however the tenant has not met the burden of proving that he gave the landlord his forwarding address in writing, as required by Section 38 of the Residential Tenancy Act, prior to applying for dispute resolution.

Therefore in the absence of sufficient proof that a forwarding address in writing was given to the landlord, it is my finding that, at the time that the tenant applied for dispute resolution, the landlord had already returned the Tenants pet deposit and was under no obligation to return the security deposit and therefore this application is premature. Accordingly, I dismiss this claim with leave to re-apply.

The Tenant has indicated during this hearing that he is in the process of moving again. Therefore, if he chooses to make another application for the return of his security deposit he would be required to prove that he served the Landlord, in writing, in accordance with Section 88 of the *Act* with a valid service address.

The Tenant has not been successful with his application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS this application, with leave to reapply.

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: October 03, 2011.

Residential Tenancy Branch