



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for the double return of the security deposit and pet damage deposit. The tenant participated in the hearing and gave affirmed testimony. The landlords did not appear.

As for service of the application for dispute resolution and notice of hearing (the "hearing package"), the tenant testified that she sent a package to each of the landlords by way of registered mail. Evidence submitted by the tenant includes the Canada Post tracking numbers for the registered mail. Both packages were returned to the tenant.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The subject rental unit is located in the basement of a house. The main floor of the house is also rented. The landlords did not live in the house and the landlords did not at any time provide the tenant with their home address and / or an address for service. The landlords provided two e-mail addresses and a contact telephone number. The telephone number later became inoperative.

There is no written tenancy agreement in evidence for the month-to-month tenancy which began in the basement of the house for the applicant and one other tenant (who is not a party to these proceedings) in March 2011. Monthly rent of \$800.00 was shared equally between the two tenants. In her written submission the tenant claims that the male landlord would "just at random...call or show up for the rent." The tenant paid a security deposit of \$200.00, in addition to a pet damage deposit of \$300.00. After giving notice, both tenants vacated the basement unit on or about July 1, 2011.

The tenant testified that for the purposes of having her own security deposit and pet damage deposit returned, she informed the landlords of her forwarding address by way of e-mail dated July 1, 2011, and later by way of registered mail. Evidence submitted by the tenant includes the Canada Post tracking number for this particular registered mail, which was ultimately returned to her.

The tenant testified that the address she used for sending all of the above registered mail to the landlords was the house address.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 88 of the Act speaks to **How to give or serve documents generally**. Section 89 of the Act addresses **Special rules for certain documents**, and provides in part:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (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 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 registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) [*director's orders: delivery and service of documents*].

Section 90 of the Act addresses **When documents are considered to have been received**, and provides in part, that documents sent by registered mail are “deemed to be received” on the 5th day after mailing.

In the absence of the landlords' having provided any alternate address, and in consideration of the landlords' practice of conducting business with the tenants exclusively at the rental unit, I find that both landlords have been properly served with the hearing package in accordance with the Act.

I further find that the tenant informed the landlords in writing of her forwarding address.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security and / or pet damage deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security and / or pet damage deposit and must pay the tenant double the amount of the security and / or pet damage deposit.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlords have not complied with the statutory provisions set out in section 38 of the Act, as above. Accordingly, I find that the tenant has established entitlement to a monetary order as compensation for the double return of the security deposit and pet damage deposit in the combined total of amount of \$1,000.00 [(2 x \$200.00) + (2 x \$300.00)].

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of \$1,000.00. This order may be served on the landlords, filed in the 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: February 17, 2012.

Residential Tenancy Branch