



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on February 8, 2012. Canada Post receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding, in accordance with the *Act*.

The Tenant and her Agent appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite them being served notice of this hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act* or regulation?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed she entered into a tenancy agreement that began July 1, 2010 and ended when she vacated June 30, 2011. Rent was payable on the first of each month in the amount of \$1,600.00 and the Tenant paid \$800.00 on July 1, 2010 as the security deposit.

The Tenant stated she has provided her forwarding address in writing to the Landlord in September, and again October 17, 2011 via registered mail. She advised that she has

sent these letters via registered mail as supported by the Canada Post receipts provided in her evidence however the letters and the hearing documents were returned “unclaimed” as the Landlord does not pick them up.

Analysis

The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. The Tenant affirmed the application for dispute resolution was served via registered mail on February 8, 2012, but it was returned and mark “unclaimed”. Section 90 of the act provides that registered mail is deemed received five days after it is mailed and therefore I find the Landlord to be sufficiently served notice of this proceeding.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her documentary evidence which included, among other things, Canada Post receipts, a copy of the October 17, 2011 letter requesting the return of her security deposit, and a copy of the tenancy agreement.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended June 30, 2011 and that the Tenant provided the Landlord with her forwarding address in writing on October 17, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant’s security deposit in full or file for dispute resolution no later than November 2, 2011. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double his security deposit plus interest in the amount of **\$1,600.00** (2 x \$800.00 + \$0.00 interest).

The Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's application will be accompanied by a Monetary Order in the amount of **\$1,650.00** (\$1,600.00 + \$50.00). This Order is legally binding and must be served upon the Landlord.

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: April 11, 2012.

Residential Tenancy Branch