



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 requested return of double the security deposit.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord at the business address shown on his internet web site. The landlord was also served by registered mail sent to the rental unit service address, indicated on the tenancy agreement.

The tenant served a 3rd hearing package to the landlord's agent, via registered mail to the agent's service address indicated on the tenancy agreement.

All 3 packages were mailed on February 9, 2012; copies of the Canada Post receipts and tracking numbers were provided as evidence, as was the tenancy agreement which provided only the agent's service address. All 3 packages were returned to the tenant, marked as "moved."

The tenant stated that she has relocated next door to the rental unit address and that on an almost daily basis she sees the agent (respondent) at the rental property; the tenant does not believe the agent has moved. Further, I have determined that the landlord received other mail from the tenant in January, 2012, which had been sent to the same address used for service by the tenant. The landlord then responded to that mail, indicating that as late as January 17, 2012, the service address had not changed. Even if the address had changed, the landlord is responsible for ensuring mail is forwarded to any new address, so that their responsibilities under the Act may be respected.

These documents are deemed to have been served to the landlord in accordance with section 89 of the Act; however the landlord or his agent did not appear at the hearing. I note that refusing registered mail does not avoid service.

Issue(s) to be Decided

Is the tenant entitled to return of double the \$437.50 deposit paid?

Background and Evidence

The tenancy commenced on May 1, 2007; a deposit in the sum of \$437.50 was paid on April 6, 2007. No condition inspection reports were completed. A copy of the tenancy agreement was supplied as evidence, which included a service address for the landlord's agent.

The tenant vacated the rental unit on December 31, 2011.

The tenant provided a copy of a letter sent to the landlord on January 13, 2012, which requested return of the deposit to her forwarding address, which was provided in the letter.

On January 17, 2012, the landlord wrote the tenant a note indicating deductions made from the deposit. A cheque in the sum of \$153.00 was returned to the tenant at her forwarding address. The tenant did not sign anything at the end of the tenancy, allowing the landlord to make deductions from the deposit. The tenant has yet to cash the cheque.

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.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages; condition inspection reports were not completed and the tenant did not sign anything at the end of the tenancy allowing the landlord to make deductions from the deposit.

The landlord returned only \$153.00 of the deposit to the tenant, after making what I find to be arbitrary deductions from the deposit, in breach of the Act. Therefore, I find that the tenant is entitled to return of double the \$437.50 deposit paid to the landlord.

If the tenant is able to successfully negotiate the cheque she holds in the sum of \$153.00, that amount owed must be adjusted by that sum.

Conclusion

I find that the tenant has established a monetary claim, in the amount double the deposit paid, \$875.00, plus \$11.48 interest.

Based on these determinations I grant the tenant a monetary Order for \$886.48. 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.

If the tenant is able to negotiate the cheque issued on the sum of \$153.00, that amount will be deducted from the sum owed by 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 04, 2012.

Residential Tenancy Branch