

DECISION

Dispute Codes:

MNSD

Introduction

This is the Tenant's application for a monetary order for double the security deposit paid to the Landlord.

The Tenant and her agent gave affirmed testimony at the Hearing.

The Tenant provided documentary evidence that she served the Landlord with the Notice of Hearing documents by registered mail sent February 6, 2012, to the Landlord's address noted on the tenancy agreement. The registered mail documents were returned to the Tenant "unclaimed". Section 90 deems service by way of registered mail to be effected 5 days after mailing the documents, whether or not the recipient chooses to accept delivery of the documents.

Despite being deemed served with the Notice of Hearing documents on February 11, 2012, the Landlord did not sign into the teleconference and the Hearing continued in his absence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on July 1, 2010 and ended on October 15, 2011. Monthly rent was \$675.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$337.50.00 on July 1, 2010. There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning of the end of the tenancy.

The Tenant's agent testified that the Tenant gave the Landlord written notification of her forwarding address on November 30, 2011, with a witness present. The Tenant's agent stated that the Landlord returned \$177.50 of the Tenant's security deposit on December 11, 2011, with no explanation why the full amount was not returned. The Tenant provided a copy of the cheque in evidence.

The Tenant's agent stated that the Tenant wrote the Landlord again on January 6, 2012, and requested full repayment of the security deposit.

Copies of both letters were provided in evidence. The November 30, 2011, letter was signed by a witness.

The Tenant's agent testified that the Tenant did not agree that the Landlord could retain any of the security deposit and that there have been no Orders made allowing the Landlord to retain any of the security deposit.

The Landlord has not filed an Application for Dispute Resolution with respect to the security deposit.

Analysis

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Based on the undisputed testimony and documentary evidence of the Tenant and her agent, I find that the Landlord received the Tenant's forwarding address in writing on November 30, 2011. I find that the Landlord did not return the security deposit or file an Application against the security deposit within 15 days of receipt of the Tenant's forwarding address.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a Monetary Order for double the security deposit, in the amount of \$675.00, less the amount that the Landlord returned on December 11, 2011, for a total of **\$497.50**. No interest has accrued on the security deposit.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$497.50** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 13, 2012.

Residential Tenancy Branch