



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 a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on May 3, 2012, to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number was provided as evidence of service. The tenant used the address, provided in writing by the landlord at the time ownership of the unit changed; a copy of this December 9, 2011, notice was supplied as evidence.

The tenant checked the Canada Post web site and determined that approximately 1 month after mailing; the landlord retrieved the registered mail.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 1, 2011; a deposit in the sum of \$425.00 was paid. Condition inspection reports were not completed.

On February 18, 2012, the tenant gave the landlord written notice ending her tenancy effective March 31, 2012. The notice included the tenant's forwarding address. The

tenant is unable to locate a copy of that notice. On March 31, 2012, the tenant met with the landlord, who wrote the tenant's address down.

On April 13, 2012, the tenant wrote the landlord, requesting return of her deposit; a forwarding address was again provided. The note, a copy of which was supplied as evidence, was sent to the landlord via registered mail. The tenant used the service address given in December, 2011. A copy of the Canada post registered mail receipt and tracking number was supplied as evidence of service.

The tenant deposited a cheque in the sum of \$425.00 on May 14, 2012; she checked her bank records to confirm the date. The tenant knows that she received the cheque, via mail, on May 13, 2012, as she deposited it the next day.

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.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. The tenant testified that prior to the end of the tenancy, with her notice ending the tenancy, she supplied her forwarding address. The tenant could not locate her copy of that note.

The tenant supplied evidence that indicated the landlord was in receipt of the written forwarding address as provided by section 90 of the Act, no later than April 18, 2012; 5 days after she mailed her address to the landlord. The landlord then had 15 days, until May 3, 2012, to return the deposit to the address given by the tenant.

The tenant received the deposit on May 13, 2012 and deposited the cheque to her account on the next day.

I find that by April 18, 2012; the landlord was in receipt of the tenant's written forwarding address.

I find that the landlord had until May 3, 2012, to return the deposit to the address provided.

I find that if the landlord mailed the deposit on the 15th day; May 3, 2012, that the deposit cheque would have been deemed served on May 8, 2012.

As the tenant did not receive the security deposit cheque until May 13, 2012, I find that the landlord failed to ensure that the cheque was mailed within 15 days of April 18, 2012, and that the deposit was not returned within the required time-frame, as set out in section 38 of the Act.

Therefore, as the landlord failed to return the deposit within 15 days of April 18, 2012, I find that the tenant is entitled to double the \$425.00 deposit; less the \$425.00 already paid.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$475.00, which is comprised of double the deposit, plus the \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution; less \$425.00 previously paid.

Based on these determinations I grant the tenant a monetary Order for \$475.00. 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.

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: July 3, 2012.

Residential Tenancy Branch