



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC

Introduction

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

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she sent the Notice of Hearing documents to the Landlord at the rental property by registered mail on July 27, 2012. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. She stated that the documents were returned to her unclaimed. Section 90 of the Act deems service in this manner to be effective 5 days after mailing the documents whether or not the recipient chooses to accept delivery.

The Tenant stated that the Landlord moved a couple of weeks before the tenancy ended and did not give her a forwarding address. However, she stated that the rental unit and the remainder of the rental property shared the same mailbox and that the Landlord regularly received mail at that address although he did not live there. She stated that she and the other occupants would leave his mail inside the back door window and that he picked it up regularly.

Based on the Tenant's affirmed testimony and the documentary evidence, I am satisfied that the Landlord was sufficiently served with the Notice of Hearing documents, pursuant to the provisions of Section 71(2)(c) of the Act.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of Hearing The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The Landlord did not attend the teleconference and the Hearing continued in his absence.

Preliminary Matter

The Tenant's Application for Dispute Resolution indicated in the "Monetary order" section that the Tenant was seeking compensation for damage or loss under the Act, regulation or tenancy agreement. She did not tick the box that seeks return of the security deposit, however in the "Details of Dispute" section of her Application, it is clear that she was seeking return of the security deposit and therefore I amended the "Monetary Order" section of her Application to include this request.

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

The Tenant gave the following testimony:

This tenancy ended on July 1, 2012. The Tenant paid a security deposit in the amount of \$237.50. There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning or the end of the end of the tenancy.

The Tenant provided the Landlord notice that she was ending the tenancy on May 27, 2012, along with rent for June, 2012, when the Landlord came to the rental unit to pick up June's rent. Her notice to end the tenancy included her forwarding address. A copy of her notice to end the tenancy was provided in evidence.

The Tenant did not agree that the Landlord could retain any of the security deposit. The Landlord has not returned any of the security deposit to the Tenant or served her with an Application for Dispute Resolution seeking to retain any of the security deposit.

Analysis

A security deposit is held in a form of trust by the Landlord for the 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 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 affirmed testimony of the Tenant, I find that the Landlord received the Tenant's forwarding address in writing on May 27, 2012, and that the Tenancy ended on July 1, 2012. I find that the Landlord did not return the security deposit within 15 days of the end of the tenancy, nor did the Landlord file for dispute resolution against the security deposit.

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 **\$475.00**.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$475.00** 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: August 27, 2012.

Residential Tenancy Branch