



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents to each of the Landlords, by registered mail, to the rental unit on June 28, 2012. He stated that the documents were returned to him "unclaimed". The Tenant provided a copy of the returned envelopes with the tracking numbers in evidence.

The Tenant testified that the Landlords did not give him an address where he could serve documents. He stated that one of the Landlords would come to the rental unit monthly to pick up the rent, which was paid in cash. The Tenant stated that he obtained a Land Title Search of the rental unit and it indicated that the Landlords were owners of the rental unit and gave the rental unit as their address. A copy of the Land Title Search was provided in evidence.

A landlord is required under Section 13(2)(e) of the Act to provide a tenant with the address for service and telephone number, in writing, on a tenancy agreement. I accept the Tenant's affirmed testimony that the Landlords did not provide their address, contrary to Section 13(2)(e) of the Act. I find that the Landlords carried on business as landlords at the rental unit and therefore the Tenant served the Landlords with the Notice of Hearing documents pursuant to the provisions of 89(1)(c) of the Act. Service in this manner is deemed to be effective 5 days after mailing the documents, whether or not the Landlords chose to accept delivery of the documents.

This application was scheduled to be heard via teleconference on August 22, 2012, at 11:00 a.m. By 11:15 a.m., neither of the Landlords had signed into the teleconference.

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.

Despite being duly served with the Notice of Hearing documents, the Landlords did not sign into the teleconference and the Hearing proceeded in their 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

The Tenant gave the following testimony:

This tenancy began in August, 2011, and ended on April 30, 2012. Monthly rent was \$650.00. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

The Tenant testified that he tried to give the Landlords written notification of his forwarding address on June 1, 2012, but the Landlords refused to take it. He stated that he sent his forwarding address to the Landlords, by registered mail, to the rental unit on June 4, 2012, and that the letter was returned to him, unclaimed. The Tenant provided the receipt and tracking number in evidence.

The Tenant testified that he did not give the Landlords his consent to retain any of the security deposit and that they have not returned any of the security deposit to him.

The Landlords have 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 the Landlords 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 Tenant provided his forwarding address to the Landlords at their place of business, by registered mail sent June 4, 2012. Therefore, I find that the Landlords were deemed to have received the Tenant's forwarding address on June 9, 2012. The Landlords did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlords 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 **\$800.00**.

The Tenant has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlords.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$850.00** for service upon the Landlords. 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 22, 2012.

Residential Tenancy Branch