



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This is an application under the *Residential Tenancy Act* (the “Act”) by the tenant for a monetary order for return of double the security deposit, and to recover the filing fee.

The tenant and an agent for the landlord attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The tenant stated that he did not receive the evidence package from the landlord. The landlord did not serve their evidence package on the Residential Tenancy Branch in accordance with the rules of procedure. As a result, the evidence package of the landlord was excluded from the hearing. The tenant confirmed that he did not submit evidence to support his claim.

Issue to be Decided

- Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the *Act*?

Background and Evidence

The tenant paid a security deposit of \$800.00 on or about February 1, 2012. The tenant and the tenant’s co-occupants vacated the premises on April 30, 2012. The tenant did not provide his forwarding address in writing. Both parties agree that the tenant provided a forwarding address verbally, and a new address by e-mail at a later date.

The parties agree that a move-out condition inspection report was completed.

The parties agree that \$375.00 of the \$800.00 security deposit was returned to the tenant in early July 2012.

Analysis

Based on the above and the evidence provided during the hearing, and on a balance of probabilities, I find the following.

The tenant confirms that he did not provide written forwarding address to the landlord. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that due to the tenant failing to provide his forwarding address in writing, he is not entitled to return of double his original security deposit.

During the hearing, the agent for the landlord confirmed that she was aware of the tenant's current address. **I find** that the tenant has already received \$375.00 of the original \$800.00 security deposit, resulting in a balance owing of \$425.00 to the tenant.

I caution the landlord that a security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from a Dispute Resolution Officer, or the written agreement of the tenant. In the matter before me, the landlord did not have any authority under the *Act* to keep any portion of the security deposit, however, was not provided with the written forwarding address by the tenant. Therefore, **I find** that the landlord is not entitled to retain any portion of the security deposit which has accrued no interest to date. As the tenant was partially successful in his application and had to apply for the return of his

security deposit, **I grant** the tenant the return of **\$25.00** of the filing fee. Therefore, **I order** the landlord to return the remaining **\$425.00** plus **\$25.00** of the filing fee to the tenant within 15 days of receiving this Decision.

I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the total amount of **\$450.00**. Should the landlord fail to comply with my order described above, the monetary order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

Conclusion

I order the landlord to return the balance of the security deposit to the tenant and \$25.00 of the filing fee. I grant the tenant a monetary order in the amount of \$450.00.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 21, 2012

Residential Tenancy Branch