



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 has made application for a monetary Order for return of 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 July 26, 2012 to the landlord via registered mail at the address noted on the Application. The tenant used the one mailing address provided by the landlord on the tenancy agreement they had signed. A Canada Post tracking number and receipt was provided as evidence of service.

The tenant said she sent both landlord's Notice of the hearing in 1 registered mail package. Just recently the registered mail was returned by Canada Post, it was marked as having been refused.

Residential Tenancy Branch Rules of Procedure require that each respondent be served with the Notice of hearing package. I have considered service that occurred to the one address given to the tenant by the landlord, as part of the tenancy agreement they signed. I find, pursuant to section 71(2) of the Act, that the landlord's were sufficiently served with Notice of the hearing. The landlord's chose to refuse the registered mail; which I find does not avoid service.

Therefore, pursuant to section 90 of the Act, effective on the 5th day after mailing, I find that these documents are deemed to have been sufficiently served on the 5th day after mailing.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on January 1, 2012; rent was \$1,450.00 per month and a deposit in the sum of \$725.00 was paid. Condition inspection reports were not completed.

The tenants vacated the unit on July 1 2012.

Despite repeated attempts to speak with the landlord so that an inspection could be completed and to retrieve their deposit, the tenants were not able to talk with the landlord.

On July 12, 2012, a letter was mailed to the landlord, at the address provided on the tenancy agreement. The letter requested return of the deposit to the address provided in writing. On July 26, 2012, the tenants applied for return of the deposit.

The tenant wishes to receive return of the deposit, in accordance with the requirements of the Act.

The tenant said that the landlord had new occupants move into the unit on July 2, 2012.

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.

There was no evidence before me that landlord has repaid the deposit as requested in writing by the tenants, sent to the landlord on July 12, 2012. I find that the landlord received the tenants' forwarding address on the 5th day after the mailing of the request, July 17, 2012. On July 26, 2012, the tenants applied requesting return of the deposit and they have yet to receive the deposit.

Therefore, I find, pursuant to section 38(6) of the Act, that the tenants are entitled to return of double the \$725.00 deposit paid to the landlord.

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

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$1,500.00, which is comprised of double the deposit paid and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,500.00. 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 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: October 12, 2012.

Residential Tenancy Branch