



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 the Notice of Hearing documents and copies of his documentary evidence were mailed to the Landlord, via registered mail. The Tenant provided the Canada Post Tracking printout, which indicates that the Landlord received the documents on September 11, 2012.

Based on the Tenant's affirmed testimony and documentary evidence, I am satisfied that the Landlord was duly served with the Notice of Hearing documents by registered mail. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing proceeded in his 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 provided a copy of the tenancy agreement in evidence. This tenancy began on November 1, 2010 and ended on July 31, 2012. Monthly rent was \$1,000.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 on November 1, 2010.

The Tenant testified that he met with the Landlord on July 29, 2012, but that no Condition Inspection Report was completed at the end of the tenancy. He stated that he gave the Landlord written notification of his forwarding address on July 29, 2012, but the Landlord requested that he send it again by registered mail. The Tenant testified that he provided the Landlord his forwarding address again on August 16, 2012, by registered mail. The Tenant provided a copy of the Canada Post tracking information, indicating that the Landlord received the registered documents on August 24, 2012.

The Tenant stated that he did not agree that the Landlord could retain any of the security deposit and that the Landlord returned \$30.00 to the Tenant on August 29, 2012. The Tenant stated that he has not cashed the cheque.

The Tenant stated that he has not received notice of any application from the Landlord claiming against the security deposit.

Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the Tenant's application in this Decision.

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 written consent to retain all or 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; or
2. make an application for dispute resolution claiming against the security deposit.

Based on the undisputed evidence of the Tenant, I find that the Landlord received the Tenant's forwarding address in writing on July 29, 2012 and again on August 24, 2012. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, 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.

The Tenant was provided with a cheque in the amount of \$30.00, which he may cash. I find that the Tenant is entitled to a monetary order pursuant to the provisions of Section 38(6) of the Act.

The Tenant has been successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Landlord.

I hereby provide the Tenant a Monetary Order, calculated as follows:

Double the amount of the security deposit	\$1,000.00
Less partial refund of security deposit	-\$30.00
Plus recovery of the filing fee	<u>\$50.00</u>
Total	\$1,020.00

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$1,020.00** 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: October 12, 2012.

Residential Tenancy Branch