



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 requested a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant's agent provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on August 24, 2012 to the landlord via registered mail at the address noted on the Application. The agent has the Canada Post receipt and tracking number; during the hearing he checked and confirmed that the registered mail was accepted on August 27, 2012.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

The tenant's evidence was served to the landlord with the hearing package.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Background and Evidence

The tenancy commenced on April 1, 2012 and was a fixed term ending March 31, 2012. Rent was \$2,100.00 per month, due on the first day of each month. A deposit in the sum of \$1,050.00 was paid.

A copy of the tenancy agreement and a move-in condition inspection report was supplied as evidence.

The tenancy agreement did not indicate what would occur at the conclusion of the fixed-term; the tenant vacated.

On May 28, 2012 the tenant wrote the landlord a letter, supplying his forwarding address. On May 29, 2012 the address was mailed to the landlord via registered mail,

to the service address indicated on the tenancy agreement. This was the same address used for service of Notice of this hearing. A copy of the letter was supplied as evidence.

The tenant submitted a copy of the front and back of the envelope which was returned to the tenant by Canada Post. The envelope indicated the date the forwarding address was mailed; it also indicated that the registered mail had been refused by the landlord.

The tenant supplied a copy of a cheque written by the landlord to the tenant on April 24, 2012, in the sum of \$25.00. A notation on the cheque indicated "security deposit refund after damages + labour plus materials deducted."

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.

I find that the tenancy ended at the conclusion of the fixed-term tenancy; March 31, 2012.

I find that effective 5 days after May 29, 2012, the landlord was served with the tenant's letter which provided his forwarding address. The tenant has supplied a copy of the letter sent to the landlord, which contained his address. The tenant also supplied evidence that the landlord refused the registered mail that was sent on May 29, 2012. Refusal of registered mail does not avoid service.

There was no evidence before me that a move-out condition inspection report was completed. It appears the landlord kept the tenant's deposit, with the exception of the \$25.00 refunded to the tenant by cheque dated April 24, 2012. There was no evidence before me that the tenant had agreed in writing, as required by the Act, at the end of the tenancy, allowing any deduction to be made from the deposit. Further, there was no evidence before me that a move-out condition inspection report was completed, in accordance with the Act.

In the absence of evidence of a move-out condition inspection report and, in the absence of evidence that the landlord either returned all of the deposit or made a claim against the deposit within 5 days of May 29, 2012, I find that the tenant is entitled to return of double the deposit, in the sum of \$2,100.00.

If the tenant is able to negotiate the cheque issued in the sum of \$25.00; the monetary order will be adjusted by that amount.

I find that the tenant's application has merit and that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of \$2,150.00. 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

Conclusion

The tenant has established a monetary claim, in the amount of \$2,150.00, which is comprised of double the deposit paid plus \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

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: November 05, 2012.

Residential Tenancy Branch