



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and MNDC

Introduction

This hearing was convened on the tenant's application for a monetary award for return of her security deposit in double on the grounds that the landlord did not return it within 15-days of the latter of the end of the tenancy or receipt of the tenant's forwarding address as required under section 38 of the *Act*. The tenant also sought return of rent paid for the month following the tenancy, which ended toward the end of November 2011 due to a fire in the rental building that rendered the subject unit uninhabitable.

In the absence of the respondent landlord, I enquired of the time and method by which the landlord was served with the Notice of Hearing and was advised by the applicant's advocate that notice had been served by fax on August 27, 2012 to a number provided by the landlord. .

Section 89 of the *Act* which sets out special rules governing service of certain documents includes methods acceptable for service of an application for dispute resolution on the other party and does not include documents sent by facsimile although such is permitted under section 88 of the *Act*.

However, section 71(2)(c) of the *Act* does delegate to me the authority to find, "that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*."

On evidence given by the tenant's advocate that in representing other tenants in the subject rental building, the landlord has on each occasion not attended the hearing and has routinely refused to return security deposits. As the landlord has also retained prepaid rent without lawful right, I find it appropriate to find service has been sufficiently made for the purposes of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of her security deposit in double and to return of rent paid in advance?

Background and Evidence

This tenant in a single room occupancy unit began on October 7, 2010. Rent was \$400 per month and the landlord holds a security deposit of \$200. Payment of the deposit was verified by a Ministry of Housing and Social Development document referencing payment of the \$200 on October 12, 2010. As a matter of note the application and verbal and documentary evidence differed on the rent and deposit claims, stated on the application as \$450 and \$200 respectively. Therefore, I have preferred the lesser claimed amounts represented by the documentary evidence.

During the hearing, the tenant and her advocate gave evidence that the tenancy had ended on November 26, 2011 when smoke and water damage from a fire in the adjoining unit had made the applicant's unit uninhabitable.

According to the tenant, she had provided the landlord with her forwarding address on vacating the rental unit. In addition, a written facsimile transmission to the landlord sent on April 24, 2012 submitted into evidence again provided her forwarding address and reiterated the landlord's promise to return her deposit and the rent for December 2011.

A document from the Ministry of Social Development, Employment and Assistance Office verified that the office had paid the \$400 rent for December 2011.

Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states 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 deposits. In the

present matter, I find that the landlord has not complied with section 38(1) and must return the \$200 security deposit in double.

Section 67 of the *Act* delegates the authority to me to determine the amount of a loss suffered by a party to a rental agreement by a breach of the agreement or legislation by the other, and to order payment of that that amount. I find that the landlord had no right under the legislation or rental agreement retain the tenant's December 2011 rent when, in fact, the tenancy had ended on November 26, 2011 under the doctrine of frustration as a result of the fire.

Thus, I find that the landlord owes to the tenant an amount calculated as follows:

Security deposit (No interest due)	\$200.00
To return rent for December 2011	400.00
TOTAL	\$800.00

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$800.00**, enforceable through the Provincial Court of British Columbia, for service on the landlord

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: November 08, 2012.

Residential Tenancy Branch