



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested a monetary Order for return of the security deposit.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were personally delivered to the landlord at the landlord's apartment. Service took place on October 25, 2012, early in the afternoon. An employee of the landlord's was present.

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.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Background and Evidence

On August 15, 2012 the tenant paid the landlord a security deposit in the sum of \$350.00 for rental of unit 308. The tenant supplied a copy of a receipt issued by the landlord indicating that a deposit had been paid for rental of the specific unit.

On August 21, 2012 the tenant decided not to rent the unit and called the landlord to inform him of that decision. The landlord told the tenant he had someone else who could move into the unit and that a cheque would be issued on September 15, 2012, returning the deposit to the tenant.

On September 16, 2012 the tenant and his brother went to the landlord's apartment and gave the landlord a note that included the tenant's forwarding address. The tenant had contacted the Residential Tenancy Branch and realized he must provide his written address to the landlord. The note was given to the landlord in the early afternoon. The landlord told the tenant he would not be returning the deposit paid.

The tenant has not received the deposit and on October 25, 2012 he applied requesting an Order for return of the deposit.

Analysis

Section 16 of the Act provides:

Start of rights and obligations under tenancy agreement

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

Therefore, as the tenant and landlord agreed to the rental, which was confirmed by the payment of the \$350.00 security deposit on August 15, 2012; I find that a tenancy was initiated and that the parties then began their rights and obligations under the tenancy agreement.

I find pursuant to section 44(f) of the Act, that on August 21, 2012, when the tenant told the landlord he would not possess the rental unit, that the tenancy agreement was ended. The tenant did not take possession of the rental unit and the landlord was free to place another occupant in the unit.

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 on September 16, 2012 the landlord was given the tenant's written forwarding address. Therefore, the landlord had 15 days from September 16, 2012 to either claim against the deposit or to return the deposit.

There was no evidence before me that the landlord made a claim against the deposit or that he returned the security deposit. Therefore, pursuant to section 38(6) of the Act I find that the tenant has established a monetary claim, in the amount of \$700.00, which is comprised of double the \$350.00 security deposit.

Based on these determinations I grant the tenant a monetary Order for \$700.00. 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 is entitled to return of double the security deposit.

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: January 29, 2013

Residential Tenancy Branch

