



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.

The parties gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord with the Notice of Hearing documents on November 10, 2012. The Landlord's agent stated that the Landlord was personally served on November 12, 2012.

The Landlord's agent stated that the Landlord's documentary evidence was taped to the door of the Tenant's forwarding address on February 4, 2013. The Tenant stated that she did not receive any documentary evidence from the Landlord.

Documentary evidence must be served on the other party at least 5 clear days prior to the Hearing date. I invited the Landlord's agent to provide affirmed testimony with respect to the Landlord's evidence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit?

Background and Evidence

This tenancy began on June 1, 2012. Rent was \$625.00 per month, due on the first day of each month. The Tenant paid a security deposit in the amount of \$312.50 at the beginning of the tenancy.

The Tenant testified that she moved out of the rental unit the last week of August, 2012. The Landlord's agent stated that the Tenant didn't move out until the end of September, 2012.

The Landlord's agent testified that there was a move-in Condition Inspection performed with the Tenant at the beginning of the tenancy. She stated that the Tenant came back

to the rental unit on October 1, 2012, to do the move-out inspection, but that she refused to sign the report.

The Tenant stated that the Landlord would not let her into the rental unit to perform a move-out Condition Inspection Report at the end of the tenancy. She stated that she tried to hand deliver her forwarding address to the Landlord, but the Landlord would not accept it. She stated that there was no move-in Condition Inspection Report completed with the Landlord, but that she did one by herself and made a list of deficiencies.

The Tenant testified that she provided the Landlord with her forwarding address in writing on October 4, 2012, by registered mail. The Tenant did not provide a copy of the registered mail receipt in evidence, but provided the tracking number orally. She stated that she also returned the key with her forwarding address.

The Tenant stated that the Landlord returned the security deposit at Christmas time, by registered mail, but that it was not within the 15 days allowed under the Act. The Tenant has deposited the security deposit. She now seeks a monetary award in the amount of \$312.50, pursuant to the provisions of the Act.

The Landlord's agent testified that the Landlord did not know the Tenant's forwarding address until she was served with the Tenant's Application for Dispute Resolution, on November 12, 2012. The Landlord's agent stated that the Landlord returned the security deposit on November 26, 2012, which is within 15 days of the date that she received the Tenant's forwarding address. The Tenant reiterated that she served the Landlord on November 10, 2012.

The Landlord's agent stated that the Tenant left the rental unit dirty, full of garbage and made damages to the rental unit. The Tenant denied this, stating that she left the rental unit clean and in good repair.

The Landlord has not filed an application for dispute resolution with respect to the security deposit or the alleged damages.

Analysis

Based on the Tenant's testimony and tracking numbers provided, I am satisfied that the Tenant mailed her forwarding address, by registered mail, to the Landlord on October 4, 2012. Service in this manner is deemed to be effective 5 days after mailing the document. Therefore, I find that the Landlord was duly served on October 9, 2012, pursuant to the provisions of Section 88(c) of the Act. Failure to accept delivery of a document does not affect the service provisions of the Act.

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 consent to retain 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, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

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. Therefore, I find that the Tenant is entitled to a monetary award for double the security deposit, in the amount of \$650.00. The Tenant has already received \$312.50 from the Landlord and I hereby provide the Tenant with a Monetary Order for the remainder in the amount of **\$312.50**.

The Landlord is at liberty to file an application for damages against the Tenant, should he so desire.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$312.50** 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: March 01, 2013

Residential Tenancy Branch

