



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant stated that she delivered the Application for Dispute Resolution and Notice of Hearing to the Landlord's residence on March 14, 2013 and the Landlord acknowledged receiving those documents on that date. I therefore find that the documents were served to the Landlord in accordance with section 71(c) of the *Residential Tenancy Act (Act)*.

The Tenant stated that she submitted a letter to the Residential Tenancy Branch, dated February 05, 2013, in which she provides the Landlord with her forwarding address. The Tenant stated that on March 16, 2013 she delivered a copy of this letter to a female at the Landlord's place of residence. The Witness for the Tenant, who is a youth support worker who has a professional relationship with the Tenant, stated that she was present when the Tenant gave this letter to the female at the Landlord's place of residence. The Landlord stated that he did not receive this letter.

I find the testimony of the Tenant and the testimony of the Witness for the Tenant to be reliable and credible, as it was all provided in a direct and forthright manner and the testimony of the Tenant is corroborated by the Witness, who has a professional relationship with the Tenant. I therefore accept that the letter dated February 05, 2013 was given to a female in the Landlord's place of residence on March 16, 2013.

On the basis of the testimony of the Landlord, I cannot conclude that he received that letter, as it is possible that the female who received the letter neglected to provide it to the Landlord. I therefore will not consider the physical document when determining the

merits of the Tenant's Application for Dispute Resolution, although I will consider the testimony regarding the content and service of the letter.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As the documents were not served to the Tenant they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began prior to the Landlord purchasing the rental unit; that the tenancy ended on December 01, 2012; that the Tenant paid a security deposit of \$275.00; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that he retained the security deposit because he believed the damage to the rental unit exceeded the value of the security deposit.

The Tenant stated that a condition inspection report was not completed at the start of the tenancy. The Landlord does not know if a condition inspection report was completed at the start of the tenancy. The Landlord stated that he did not schedule a time to inspect the rental unit at the end of the tenancy.

The Tenant stated that sometime in early January of 2013 a letter was mailed to the Landlord, in which he was provided with the Tenant's forwarding address. The Witness for the Tenant stated that she typed and mailed that letter on behalf of the Tenant. The Landlord stated that he did not receive that letter.

The Tenant stated that she moved on February 01, 2013 so on February 05, 2013 she mailed her new address to the Landlord. The Witness for the Tenant stated that she and the Tenant created this letter together. The Landlord stated that he did not receive that letter.

Analysis

As has been previously stated, I find the testimony of the Tenant and the testimony of the Witness for the Tenant to be reliable and credible, as it was all provided in a direct and forthright manner. I note that the testimony of the Tenant regarding service of the forwarding address is corroborated by the Witness, who given her professional relationship with the Tenant, can be considered a reliable witness. I therefore accept that the a forwarding address for the Tenant was mailed to the Landlord sometime in January of 2013 and that a second forwarding address for the Tenant was mailed to the Landlord on February 05, 2013.

I find it remotely possible that, due to human error, the Landlord did not receive either of the forwarding addresses that were mailed to him.

On the basis of the testimony of the Landlord, I am satisfied that he received a forwarding address for the Tenant, in writing, when he received the Application for Dispute Resolution on March 14, 2013.

On the basis of the undisputed evidence, I find that this tenancy ended on December 01, 2012; that the Tenant paid a security deposit of \$275.00; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not yet repaid the security deposit nor filed an Application for Dispute Resolution and more than fifteen days has passed since the tenancy ended and the day the Landlord received the forwarding address in writing.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

Conclusion

The Tenant has established a monetary claim of \$550.00 and I grant a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: June 04, 2013

Residential Tenancy Branch

