



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of her security deposit, doubled, and for recovery of the filing fee.

The tenant appeared; the landlord did not appear.

The tenant testified that she served the landlord with her Application for Dispute Resolution and Notice of Hearing by registered mail on April 18, 2013. The tenant supplied the registered mail receipt showing the tracking number and proof that the registered mail was unclaimed. I questioned the tenant as to the address used, and she replied that the address was the same one that she had during the tenancy as the landlord lived in the upper floor and the tenant lived in the lower level.

I find the landlord was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order, which includes her security deposit, and to recover the filing fee?

Background and Evidence

The tenant stated that the single room occupancy tenancy began on September 16, 2012, that it ended on December 31, 2012, monthly rent was \$450, and that that she paid a security deposit of \$225 at the beginning of the tenancy.

The tenant gave evidence that the landlord was provided the tenant's written forwarding address on December 31, 2012 in an email. The tenant stated that the landlord has used this address to send her a partial refund of her security deposit and that the parties communicated through email during the tenancy.

The tenant stated that there were no condition inspection reports, either for the beginning of the tenancy or the end, although the parties did have a walk through at the end of the tenancy.

The tenant also stated that the landlord has returned the amount of \$67.23 from her security deposit, although the tenant did not agree to any deductions. The tenant said that she has not deposited the cheque as she wanted to wait for the outcome of this hearing, and therefore she is seeking monetary compensation of \$450, which is her security deposit of \$225, doubled, and any interest owed.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In the absence of the landlord after being duly served the notice of this hearing, I prefer the oral and written evidence of the tenant.

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit in full or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In the case before me, the undisputed evidence shows that the tenancy ended on December 31, 2012, and that the landlord received the tenant's forwarding address on December 31, 2012, in an email, the landlord has not applied for dispute resolution claiming against the security deposit, and has returned only a portion of the tenant's security deposit.

Although the tenant communicated her forwarding address in an email transmission, I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the tenant's evidence. Additionally the

landlord used this address to return part of the tenant's security deposit, on January 8, 2013, according to the undisputed evidence of the tenant.

Although section 88 of the Act does not recognize email transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's forwarding address through the December 31, 2012, email to the landlord, with the landlord's later use of that address, sufficiently served, pursuant to section 71 of the Act.

I therefore grant the tenant's application for dispute resolution and order that the landlord pay the tenant double her security deposit.

I find that the tenant has proven a monetary claim in the amount of \$500, comprised of her security deposit of \$225, doubled to \$450, and for recovery of the filing fee of \$50.00 due to the tenant's successful application, and is therefore entitled to a monetary order in that amount.

I have not made a deduction of the amount of the partial refund paid by the landlord, as the tenant has submitted that she never deposited the cheque.

Conclusion

I therefore grant the tenant a final, legally binding monetary order in the amount of \$500, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The landlord is advised that costs of such enforcement may be recovered from 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* and is being mailed to both the applicant and the respondent.

Dated: July 09, 2013

Residential Tenancy Branch

