



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord seeks a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant seeks a monetary order for the return or double the security deposit.

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend. The Tenant states that the Landlord was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on May 10, 2013. The Tenant has submitted via direct testimony a copy of the Canada Post Registered Mail Customer Receipt as confirmation. I accept the undisputed testimony of the Tenant and find that the Landlord was properly served.

36 minutes after the start of the hearing the Landlord called into the conference call hearing. The Landlord states that the Tenant was served with his notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on July 13, 2013. The Tenant disputes this stating that she is not aware of any applications filed by the Landlord. The Landlord has provided in his direct testimony a Customer Receipt Tracking number as confirmation. The Tenant is adamant that she has received nothing from the Landlord. To clarify the service of both notice of hearing packages for each applicant an online search of Canada Post tracking system revealed that the Tenant's notice of hearing package was received by the Landlord. The online search of the Landlord's notice of hearing package shows based upon the tracking number provided from the Landlord's direct testimony show that the package was sent on July 13, 2013 which was confirmed by the Landlord. The online search shows that the package was delivered to an address in Richmond and signed by "AA CDTI". Confirmation from both parties show that the Tenant's mailing address is in North Vancouver. I find based upon these details that the Landlord has not properly served

the Tenant with his notice of hearing package and documentary evidence. The Landlord's Application is dismissed with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on December 20, 2012 on a fixed term tenancy for 1 month ending on January 20, 2013 as shown by the submitted copy of the signed tenancy agreement. Both parties agreed that a \$1,000.00 security deposit was paid and is currently held by the Landlord.

Both parties agreed that the tenancy ended on January 20, 2013 as per the signed tenancy agreement.

The Tenant states that she emailed a request to the Landlord for the return of her security deposit via her daughters address in North Vancouver. After receiving no reply the Tenant states that she also sent a written request via Canada Post Registered Mail on February 28, 2013 for the return of her security deposit and provided her forwarding address in writing. The Tenant has submitted a copy of the request letter, a copy of the envelope returned by Canada Post Registered Mail date stamped February 28, 2013 with a selection by the Canada Post employee as "refused". The Tenant has also submitted a copy of a search through the Canada Post On-line Tracking that confirms the item was sent on February 28, 2013 and that the item was "refused" in Campbell River by the recipient on March 10, 2013.

The Landlord disputes that he did not refuse any packages as he did not receive any from Canada Post.

Analysis

I prefer the evidence of the Tenant over that of the Landlord. I am satisfied that the Tenant attempted to serve the Landlord with her forwarding address in writing by Canada Post Registered Mail and that the package was refused. I deem that the Landlord was served on March 10, 2013 as indicated on the Canada Post online search date of the refusal.

Section 38 of Act states, within 15 days of either the end of tenancy on January 20, 2013 or the later on March 10, 2013 when the Landlord is deemed to have received the Tenant's forwarding address in writing, the Landlord must return the security deposit or file an application for dispute resolution. I note that the Landlord's Application to retain the security deposit was not filed until June 27, 2013. The Landlord failed to do either. Pursuant to Section 38 (6) the Landlord must pay double the security deposit. The Tenant has established a monetary claim for \$2,000.00. The Tenant is granted a monetary order under section 67 for \$2,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord's Application is dismissed with leave to reapply.
The Tenant is granted a monetary order for \$2,000.00.

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: July 25, 2013

Residential Tenancy Branch