



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 587667 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 5, 2013, by the Tenant to obtain a Monetary Order for the return of double their security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The Tenant submitted documentary evidence which indicates the Landlord was served with copies of the application for dispute resolution, Notice of dispute resolution hearing, and the Tenant's evidence, on July 12, 2013, by registered mail. Canada Post receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord is deemed served notice of this proceeding on July 17, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Landlord's absence.

Issue(s) to be Decided

Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant submitted a copy of her fixed term tenancy agreement into evidence and confirmed that her tenancy began October 1, 2012, and switched to a month to month tenancy after April 1, 2013. Rent was payable on the first of each month in the amount of \$875.00 and on September 19, 2012 she paid \$425.00 as the security deposit plus \$40.00 as the deposit for the parking remote. In the last week of April 2013 she provided proper notice to end her tenancy at the end of May and she vacated by May 23, 2013.

The Tenant testified that she attended a walk through at the beginning of her tenancy but that no condition inspection report forms for were completed or signed. She had scheduled a move out inspection with the Landlord on May 23, 2013, at 11:00 a.m. but the Landlord did not attend. She called the Landlord to find out where he was and he told her he was running late. She informed the Landlord she had to leave because she

had a ferry to catch and he advised he would conduct the walk through in her absence. She stated that she provided her forwarding address, in writing, to the Landlord on May 23, 2013, and several times after that by text messages, when she attempted to get her deposits returned. She said the Landlord kept telling her that the cheque was in the mail.

The Tenant stated that shortly after serving the Landlord with her hearing documents she received a voice message from him asking what the papers were. He also stated something about they had agreed to return her deposit. Then in the first week of August 2013, she received an envelope that was post marked August 2, 2013 which had a cheque inside for \$465.00 dated July 1, 2013. The cheque covered her security deposit of \$425.00 plus the \$40.00 remote deposit. She cashed the cheque in August and it cleared the bank okay.

The Tenant indicated that she wished to proceed with her claim for double her deposit and to recover her filing fee because the Landlord made no attempt to return her money until after he received her claim. He kept her deposit for three months with no right which caused her to suffer without the money.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and corroborated by her documentary evidence.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended May 23, 2013, and that the Tenant provided the Landlord with her forwarding address in writing on May 23, 2013, and again by several text messages in June and July 2013.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than June 7, 2013. They did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double the security deposit plus interest in the amount of **\$850.00** (2 x \$425.00 + \$0.00 interest).

The Tenant has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

Monetary Order –The Tenant is entitled to a monetary claim as follows:

Double Security Deposit (2 x \$425.00)	\$850.00
Return of Garage Remote Deposit	40.00
Interest owed on deposits	0.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$940.00
LESS: Payment rec'd in August 2013	<u>-465.00</u>
Offset amount due to the TENANT	<u>\$475.00</u>

Conclusion

The Tenant has been granted a Monetary Order in the amount of **\$475.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not 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: October 07, 2013

Residential Tenancy Branch

