# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On May 14, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On August 02, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; a monetary Order for unpaid rent or utilities; a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

At the hearing on August 13, 2013 the female Tenant stated that the Tenant's Application for Dispute Resolution was served to each Landlord, via registered mail, several weeks ago. The Landlord stated that he and the other Respondent to the Tenant's claim received the Application for Dispute Resolution and that he was representing the female Landlord at these proceedings.

At the hearing on August 13, 2013 the Landlord stated that the Landlord's Application for Dispute Resolution and documents the Landlord wishes to rely upon as evidence were personally served to the Tenant on August 05, 2013. The female Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

At the hearing on August 13, 2013 the female Tenant stated that they were out of town for five days after they were served with the Landlord's Application for Dispute Resolution and they have not had sufficient time to prepare a response to the Landlord's claims. She requested an adjournment for the purposes of preparing a response to the Landlord's claims.

The Landlord opposed the application for an adjournment, as he believes seven days is ample time to prepare a response to the claims.

Given that this dispute relates to a monetary claim and a delay will not have a significant impact on either party; that the hearing can be reconvened within a few weeks; that there has been a significant delay between the time this tenancy ended and the time the Landlord filed this Application for Dispute Resolution; and that the Tenants were out of town for a period of time after being served with the Application for Dispute Resolution, I determined it was reasonable to grant an adjournment to provide the Tenant with an opportunity to prepare a response to the Landlord's claims.

The Landlord was not represented at the reconvened hearing on September 25, 2013 and the hearing proceeded in the absence of the Landlord. The Tenants were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

At the hearing on September 25, 2013 the female Tenant stated that additional evidence was sent to the Landlord, via registered mail, on September 16, 2013. In the absence of evidence to the contrary, I find that this evidence was served in accordance with section 88 of the *Act.* I specifically note that this evidence is simply a written response to the claims being made by the Landlord and was not relevant to my final decision in this matter.

As the Landlord did not attend the hearing in support of the Landlord's Application for Dispute Resolution, I find that the Landlord did not diligently pursue the Landlord's claims. I therefore dismiss the Landlord's Application for Dispute Resolution, without leave to reapply.

## Issue(s) to be Decided

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

## Background and Evidence

The male Tenant stated that this tenancy began on May 01, 2011; that it ended on October 15, 2011; that the monthly rent was $900.00; that the Tenant paid a security deposit of $450.00 on April 20, 2011; that the Landlord and the Tenant met in Surrey, B.C. on April 20, 2011, at which time they signed a condition inspection report; that the Tenant had not viewed the rental unit prior to signing the condition inspection report; that the Landlord and the Tenant never jointly inspected the rental unit at the start of the tenancy; that the Landlord and the Tenant never jointly inspected the rental unit at the end of the tenancy that the Landlord did not schedule at time to inspect the rental unit at the start or the end of the tenancy; that on October 13, 2011, October 14, 2011, or

October 15, 2011 the Tenant wrote a forwarding address on a piece of paper and gave it to the Landlord's son who was living in a suite on the residential property and was acting on behalf of the Landlord; that the Tenant never gave the Landlord written authorization to retain any portion of the security deposit; and that sometime in November of 2011 the Landlord sent a cheque, in the amount of $12.00, to the forwarding address the Tenant had provided.

Analysis

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of $450.00 on April 20, 2011; that the tenancy ended on October 15, 2011; that on, or before, October 15, 2011 the Tenant provided a forwarding address, in writing, to an individual who was acting on behalf of the Landlord; and that sometime in November of 2011 the Landlord sent a cheque, in the amount of $12.00, to the forwarding address the Tenant had provided. I find that the act of sending the cheque is a clear indication that the Landlord received the forwarding address for the Tenant.

Section 38(1) of the *Residential Tenancy Act (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 or make an application for dispute resolution claiming against the deposits. I find that the Landlord failed to comply with section 38(1) of the *Act*, as there is no evidence that the Landlord repaid the full security deposit or that the Landlord filed an Application for Dispute Resolution prior to October 30, 2011.

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.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of $950.00, which is comprised of double the security deposit and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. This claim must be reduced by the $12.00 that has already been returned to the Tenant by the Landlord.

Based on these determinations I grant the Tenant a monetary Order for the amount $938.00. In the event that the Landlord does not comply with this Order, it may be

served on the Landlord, 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: September 25, 2013

Residential Tenancy Branch