



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

The tenant appeared; the landlord did not appear.

The tenant testified that they served the landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail on May 17, 2013. The tenant supplied testimony of the tracking number of the registered mail and said the mail was returned as it was unclaimed.

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 their 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 their security deposit, and to recover the filing fee?

Background and Evidence

The tenant provided evidence that this tenancy began on February 15, 2012, ended on December 1, 2012, monthly rent was \$800, and a security deposit of \$400 was paid by the tenants at the beginning of the tenancy.

The tenant gave evidence that the landlord was provided the tenants' written forwarding address on December 18, 2012, in a letter via registered mail.

Section 90 of the Act states that documents served by registered mail are deemed delivered five days later. Thus the landlord was deemed to have received the tenants' written forwarding address on December 23, 2012.

The tenant stated that the landlord has not returned their security deposit and is seeking monetary compensation of \$1000, which is their security deposit of \$400, doubled, and an additional \$200 for the efforts he has made in attempting to collect his security deposit.

The tenants' relevant evidence included a copy of the letter requesting their security deposit returned, the tenancy agreement, and registered mail receipts.

I have no evidence before me that the landlord has filed an application for dispute resolution claiming against the security deposit.

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 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 1, 2012, and that the landlord received the tenant's written forwarding address on December 23, 2012, the landlord has not applied for dispute resolution claiming against the security deposit, and has not returned any portion of the tenants' security deposit.

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

I dismiss the tenants' claim for an additional \$200, as the tenant has not presented any evidence that he has incurred a loss in this amount, or basis under the Act for being awarded this amount.

I find that the tenants have proven a monetary claim in the amount of \$850, comprised of their security deposit of \$400, doubled to \$800, and for recovery of the filing fee of \$50 due to the tenants' successful application, and is therefore entitled to a monetary order in that amount.

Conclusion

I therefore grant the tenant a final, legally binding monetary order in the amount of \$850, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants 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 applicants and the respondent.

Dated: August 19, 2013

Residential Tenancy Branch

