



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with a Review Hearing of the tenant's original Application for Dispute Resolution, seeking a monetary order for the return of double her security deposit, and the recovery of the filing fee.

On July 11, 2013, an Arbitrator issued a decision dismissing the tenant's application without leave to reapply. The tenant applied for a review of the July 11, 2013 decision citing that the tenant did not receive a Notice of Adjourned Hearing from the Residential Tenancy Branch.

On August 14, 2013, a different Arbitrator suspended the July 11, 2013 decision pending the outcome of this Review Hearing.

The tenant attended the Review Hearing today scheduled for 1:30 p.m. The landlords did not attend the Review Hearing. As the landlords did not attend the Review Hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The tenant testified that she served the landlords with the Notice by registered mail on August 22, 2013 and provided a registered mail tracking number in support of her testimony. The tenant stated that she addressed the registered mail package to the same service address that the landlords had provided during the tenancy.

The tenant stated that according to the postal registered mail tracking website, the landlords failed to claim the registered mail package, and the registered mail package was returned to the tenant on September 23, 2013 and marked as "unclaimed". Based on the undisputed testimony of the tenant which included registered mail tracking information, I find the landlords were deemed served in accordance with section 90 of the Act, five days after the registered mail package was mailed to their address, which would be August 27, 2013. I note that refusal or neglect to accept registered mail does not constitute grounds for Review.

Issue to be Decided

- Is the tenant entitled to the return of double her security deposit under the *Act*?

Background and Evidence

The tenant testified that a month to month tenancy began on June 30, 2012 and that monthly rent of \$970.00 was due on the first day of each month. The tenant stated that she paid a security deposit of \$485.00 to the landlords at the start of the tenancy, which the landlords continue to hold.

The tenant stated that she vacated the rental unit on January 31, 2013 and subsequently provided her written forwarding address dated February 6, 2013 on February 10, 2013 personally to the landlords. The tenant stated that she hand delivered her written forwarding address on February 10, 2013 which was on a piece of paper. The tenant stated that the landlords wrote to her on May 23, 2013 indicating that they would not be returning her security deposit due to alleged damage to the rental unit. The tenant testified that she did not agree to sign over any portion of her security deposit to the landlords. The tenant stated that she has not been served with any application from the landlords under the *Act* claiming towards the security deposit.

The tenant stated that she is seeking the return of double her security deposit in accordance with section 38 of the *Act*, in addition to the recovery of her filing fee.

Analysis

Based on the undisputed testimony of the tenant, and on the balance of probabilities, I find the following.

The tenant testified that she vacated the rental unit on January 31, 2013 and provided her written forwarding address on a piece of paper and personally served that piece of paper on the landlords on February 10, 2013. On May 23, 2013 the tenant stated that the landlords wrote to her indicating that they would not be returning her security deposit. The tenant stated that she has not signed over any portion of her security deposit to the landlords.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

[emphasis added]

Given the above, **I find** the landlords breached section 38 of the *Act* by failing to return the tenants security deposit of \$485.00 to the tenant within 15 days of February 10, 2013 and failing to apply for dispute resolution claiming towards the tenant's security deposit. Therefore, **I find** the tenant is entitled to the return of double her original security deposit of \$485.00 in the amount of \$970.00.

As the tenant's application had merit, **I grant** the tenant the recovery of her filing fee in the amount of **\$50.00**.

Given the above, **I set aside** the July 11, 2013 Decision. **I find** that the tenant is entitled to the return of double her security deposit in the total amount of \$970.00 plus the filing fee of \$50.00 for a grand total of **\$1,020.00**.

Pursuant to section 67 of the *Act*, **I grant** the tenant a monetary order in the amount of **\$1,020.00**. **I order** the landlords to pay the tenant this amount forthwith. Should the landlords fail to pay the tenant as ordered, the tenant must serve the landlords with the monetary order and may enforce this order in the Provincial Court of British Columbia (Small Claims).

Conclusion

I set aside the July 11, 2013 Decision. I order the landlords to pay the tenant \$1,020.00 and I grant the tenant a monetary order of \$1,020.00. Should the landlords fail to pay the tenant as ordered, the tenant must serve the landlords with the monetary order and may enforce this order in the Provincial Court of British Columbia (Small Claims).

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 26, 2013

Residential Tenancy Branch

