



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The landlord filed on June 03, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for loss (\$1300.00) – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed on July 10, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for double *the* security deposit (\$1300.00) - Section 38
2. An Order to recover the filing fee for this application - Section 72.

Only the tenant attended the hearing. Despite the landlord not attending the hearing to defend their own application, the tenant provided proof they served the landlord with a Notice of Hearing in respect to their application, by registered mail sent on July 18, 2013. The tenant also testified they sent the landlord all their evidence. The tenant provides proof by way of mail registration receipt dated July 18, 2013. *I accept the landlord was served in accordance with Section 88 of the Act.* The tenant was given a full opportunity to present relevant evidence and make relevant submissions. As the landlord did not attend the hearing their application is preliminarily **dismissed**, without leave to reapply.

Prior to concluding the hearing the tenant acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenant's undisputed evidence is as follows. The tenant paid a \$650.00 security deposit in January 2010 at the outset of the tenancy. The tenancy ended on May 20, 2013. The tenant gave the landlords their forwarding address within an e-mail dated May 23, 2013. The tenant provided evidence that the landlord acknowledged the e-mail the same date. The tenant provided additional evidence of e-mail exchanges with the landlord and testified that despite the relatively close proximity of the parties, e-mail communication has always been the primary form of communication between them.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I accept that e-mail communication *in this tenancy* is equivalent to in writing. I find the landlords received the tenant's forwarding address on May 23, 2013 and I find the landlords made application to retain the deposit within 15 days of receiving the tenant's forwarding address. As a result, I find the tenant is not entitled to the doubling provision within Section 38 of the Act. None the less, the tenant is entitled to the return of their original security deposit in the amount of \$650.00.

The landlords currently hold a security deposit of \$650.00 and I find that they must return this amount. As the tenant was partly successful in their claim, I grant them the filing fee of \$50.00. I award the tenant **\$700.00**.

Conclusion

The landlord's application **is dismissed**, without leave to reapply.

I grant the tenant a monetary order under section 67 for **\$700.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 11, 2013



Residential Tenancy Branch

RTB-136

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order* **(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca