



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC

Introduction

This is the Tenant's application for a monetary order in the equivalent of double the security deposit.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he sent the Notice of Hearing documents and copies of his documentary evidence by registered mail, to the Landlord at his residence on August 25, 2013. The Tenant provided a copy of the registered mail receipt and tracking number in evidence. He stated that the registered mail was returned to him.

Based on the provisions of Section 89(1)(c) of the Act, I find that the Landlord was duly served with the Notice of Hearing documents.

Issue to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenant testified that he rented the Landlord's home from April 28, 2013, to May 21, 2013. A copy of the tenancy agreement was provided in evidence. Rent was \$10,500.00 per month. The Tenant paid a security deposit in the amount of \$5,250.00 on April 24, 2013.

The Tenant testified that no condition inspection report was completed at the beginning or the end of the tenancy.

The Tenant stated that the Landlord was attempting to sell the rental unit, but that the Landlord was still residing there and had moved back in after the Tenant moved out.

The Tenant testified that he provided the Landlord with his forwarding address on July 10, 2013, and asked for return of his security deposit. He stated that at the beginning of October, 2013, the Landlord sent him a partial refund of the deposit, in the amount of \$4,500.00, which was in American dollars.

Analysis

I accept the undisputed affirmed testimony of the Tenant in its entirety.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

In this case, the Landlord mailed a portion of the security deposit to the Tenant at the beginning of October, 2013, which is not within the 15 day time limit to do so. I find that the Landlord did not have a right under the Act to retain any of the Tenant's security deposit. The Landlord did not file an application for dispute resolution against the security deposit.

The exchange rate from Canadian dollars at the beginning of October, 2013, was \$1.03 Canadian = \$1.00 American.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order, calculated as follows:

Double the security deposit	\$10,500.00
Less amount refunded (\$4,500.00 US x \$1.03)	<u>-\$4,635.00</u>
Balance owed to the Tenant	\$5,865.00

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$5,865.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 09, 2013

Residential Tenancy Branch

