



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that she served the Application for Dispute Resolution, the Notice of Hearing, and documents she wished to rely upon as evidence to the Landlord, via registered mail, on August 22, 2013. She stated that she understands these were sent to an unknown address in Ontario and were never delivered to the Landlord. The Agent for the Landlord stated that these documents were not received by mail.

The Tenant stated that she personally served the Application for Dispute Resolution, the Notice of Hearing, and documents she wished to rely upon as evidence to the Agent for the Landlord on November 12, 2013. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on November 25, 2013. She stated that he personally served those documents to the Landlord on November 26, 2013. The Landlord acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

The Tenant stated that she recently submitted photographs to the Residential Tenancy Branch, which were not before me at the time of the hearing. As these photographs were not available to me and they were not served in accordance with the timelines established by the Rules of Procedure, they were not accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch on a variety of dates. The Agent for the Landlord stated that he personally delivered those documents to a male at the service address provided by the Tenant on November 08, 2013. The Tenant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

The Tenant and the Agent for the Landlord both declined the opportunity to request an adjournment for the purposes of considering any of the documents that have been accepted as evidence.

Preliminary Matter

With the consent of both parties, the Application for Dispute Resolution was amended to remove the name of the Agent for the Landlord and replace it with the name of the Landlord, as it appears on this Decision.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2012; that a security deposit of \$475.00 was paid for the tenancy; that the tenancy ended on July 31, 2013; that the Tenant did not authorize the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord has not filed an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she provided the Landlord with a forwarding address, via text message, on August 01, 2013. She submitted a copy of the text message she contends was sent.

The Agent for the Landlord stated that the parties did communicate by text message; that he sent three text messages to her in which he requested a forwarding address; and that he never received the forwarding address that was allegedly sent to him, via text message, on August 01, 2013.

Analysis

I find that the Tenant has submitted insufficient evidence to show that she provided the Landlord with her forwarding address, via text message, on August 01, 2013. In reaching this conclusion I was influenced, in part, by the Agent for the Landlord's testimony that the text message was not received. Although the Tenant did provide a copy of the text message that she stated was sent on August 01, 2013, I have no evidence to show that the message was actually received. Given the unreliability of electronic communications, I find it entirely possible that both parties are being truthful.

On the basis of the undisputed evidence, I find that the Landlord received a forwarding address for the Tenant on November 12, 2013 when the Tenant personally served the Agent for the Landlord with this Application for Dispute Resolution.

Section 38(1) of the *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. In the circumstances before me, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution. To comply with section 38(1) of the *Act*, the Landlord was obligated to return the security deposit or file an Application for Dispute Resolution by November 27, 2013, which is 15 days after the forwarding address was received.

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.

Conclusion

I find that the Tenant has established a monetary claim of \$1,000.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: November 29, 2013

Residential Tenancy Branch

