



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 15, by the Tenant to obtain a Monetary Order for the return of their security deposit and to recover the cost of the filing fee from the Landlord for this application.

The Tenant submitted documentary evidence which indicates the Landlord was served with copies of the Tenant's application for dispute resolution and Notice of dispute resolution hearing, on October 19, 2013, by registered mail. Canada Post receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord is deemed served notice of this proceeding on October 24, 2013, five days after it was mailed, in accordance with section 90 of the Act; therefore I proceeded in the Landlord's absence.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order

Background and Evidence

The Tenant testified that she entered into a verbal tenancy agreement which began on October 1, 2010 and ended when she vacated the unit on August 27, 2013. Rent was payable on the first of each month in the amount of \$850.00 and in approximately August 2010 she paid a combined pet and security deposit of \$500.00.

The Tenant stated that she sent her forwarding address to the Landlord in writing on September 18, 2013, as supported by the Canada Post tracking information she provided in her evidence; however, the Landlord has not returned her deposit.

Analysis

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting

possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant.

The evidence supports the tenancy ended August 27, 2013, and that the Tenant provided the Landlord with her forwarding address in writing by registered mail on September 18, 2013. The Landlord is deemed to have received the forwarding address as of September 23, 2013, pursuant to section 90 of the Act.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security and pet deposit in full or file for dispute resolution no later than October 8, 2013. They did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double his security deposit plus interest in the amount of **\$1,000.00** (2 x \$500.00 + \$0.00 interest).

The Tenant has succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$1,050.00** (\$1,000.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not 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: January 14, 2014

Residential Tenancy Branch

