



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the landlord via registered mail to the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service completed on December 27, 2013. The tenant used the landlord service address that was indicated on the copy of the tenancy agreement supplied as evidence. The address used was also the same as that indicated on a December 2013 cheque issued by the landlord.

The registered mail was returned to the tenant, marked as unclaimed.

Refusal to claim registered mail does not allow a party to avoid service. Therefore, I find that these documents are deemed to have been served in accordance with section 89 and 90 of the Act, effective the 5th days after mailing. The landlord did not attend the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit; less \$150.00 returned by the landlord?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2005. On April 10, 2005 the tenant paid a security deposit in the sum of \$650.00. A copy of the tenancy agreement was supplied as evidence.

No condition inspections were completed.

The tenants gave notice to end the tenancy effective December 1, 2013. The landlord wanted to retain part of the deposit for carpeting but the tenant refused to agree to deductions as the carpet was damaged from normal wear and tear.

On 3 occasions the tenant left the landlord a note in his mail box, requesting return of the deposit to the address indicated in the note. A copy of the note was supplied as evidence. December 6, 2013 was the last date the note was left for the landlord and on December 14, 2013 the landlord issued a cheque to the tenant in the sum of \$150.00; that cheque was mailed to the tenant's forwarding address. A copy of the cheque was supplied as evidence; the cheque indicated the landlord's address.

The tenants claimed return of \$1,023.03; double the balance of his deposit. The tenant said he was told by a Residential Tenancy Branch staff member that he could not request return of double the deposit, less the sum returned.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages. There was no evidence before me that the landlord submitted an application claiming compensation for damage.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. From the evidence before me that landlord returned only \$150.00 of the security deposit and retained \$500.00 without the written consent of the tenant, given at the end of the tenancy. Section 38(4) of the Act allows a landlord to retain a sum from the deposit if the tenant agrees in writing at the end of the tenancy.

Therefore, as the landlord was given the tenant's written forwarding address on December 6, 2013 and only returned \$150.00 of the deposit, I find that the tenants are entitled to return of double the \$650.00 deposit, plus \$23.02 interest; less \$150.00 previously returned.

I have applied the legislation in relation to the sum owed to the tenants, which exceeds the amount indicated on the application.

I find that the tenant's application has merit, and that the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for \$1,223.02. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenants are entitled to return of double the security deposit and interest; less the sum previously returned.

The tenants are entitled to filing fee costs.

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: February 19, 2014

Residential Tenancy Branch

