



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has 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 on January 15, 2014 to the landlord via registered mail at the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service. The tenant served the landlord at the upper unit of the house where the rental unit was located. The mail was not returned.

These documents are deemed to have been served on the 5th day after mailing, in accordance with section 89 and 90 of the Act, however the landlord did not appear at the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

On October 24, 2013 the tenant paid a security deposit in the sum of \$275.00, after agreeing to rent the unit effective December 1, 2013. A receipt was issued by the landlord.

On November 14, 2013 the tenant informed the landlord she would not move into the rental unit. On that date the tenant left a letter in the landlord's mailbox, providing her forwarding address.

The tenant has not received the security deposit and has requested return of double the deposit.

I requested that the tenant submit a copy of the tenancy agreement, security deposit receipt and letter given to the landlord on November 4, 2013. The documents are to be submitted to the Residential Tenancy Branch no later than noon on April 28, 2013; however the tenant did not supply the documents as requested. I have then relied upon the tenant's affirmed testimony.

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 tenant failed to supply copies of the evidence that was requested during the hearing. In the absence of those documents I have accepted the tenant's affirmed testimony in relation to the terms of the tenancy and the security deposit paid.

From the affirmed testimony provided I find that the tenant did enter into a tenancy agreement with the landlord and that the tenant then withdrew from the contract, by failing to take possession of the unit and notifying the landlord of her intention.

I find that the landlord received the tenant's written forwarding address effective November 17, 2013; three days after it was left in the landlord's mail box.

I have no evidence that that landlord has repaid the deposit or submitted a claim against the deposit within fifteen days of November 17, 2013; the date the forwarding address is deemed given to the landlord. Therefore, pursuant to section 38(6) of the Act, I find that the tenant is entitled to return of double the \$275.00 deposit paid to the landlord.

I find that the tenant's application has merit and that the tenant is 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 tenant a monetary Order in the sum of \$550.00. 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 tenant is entitled to return of double the \$275.00 security deposit.

The tenant is 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: April 28, 2014

Residential Tenancy Branch