



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Preliminary Issues

Upon review of the Tenant's application for dispute resolution the Tenant listed in the Details of the Dispute that she is "*seeking double the amount of security deposit, filing fee and the cost of registered mail*".

Based on the aforementioned I find the Tenant had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as she clearly indicated her intention of seeking double the deposit plus registered mail costs. Therefore, I amend the application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 25, 2014, by the Tenant for a Monetary Order for the return of double her security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The Tenant testified that she served the Landlord her application and hearing documents, by registered mail on April 25, 2014 and provided copies of Canada Post receipts in her evidence. Based on the submissions of the Tenant I find the Landlord was deemed served notice of this proceeding on April 30, 2014, five days after they were served, in accordance with section 90 of the Act.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlord despite them being served notice of this hearing in accordance with the Act. Accordingly, I proceeded in the absence of the Landlord.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

The Tenant affirmed the parties entered into a fixed term tenancy agreement that began March 1, 2013 and switched to a month to month tenancy after March 1, 2014, as supported by tenancy agreement provided in her documentary evidence. Rent was payable on the first of each month in the amount of \$800.00 and on January 20, 2013, the Tenant paid \$800.00 as a security deposit. The Tenant provided written notice to end her tenancy with her forwarding address by registered mail on February 19, 2014. The Tenant submitted into evidence a copy of her letter, the Canada Post tracking receipt, and a print out of the Canada Post website showing the Landlord received her letter on February 25, 2014. The Tenant vacated the unit by March 31, 2014.

The Tenant submitted evidence of an email sent by the Landlord instructing her to drop the keys off at a local locksmith. No condition inspection report forms were completed by the Landlord.

Despite her attempts to recover her deposit through numerous email communications with the Landlord, as provided in evidence, the Tenant stated that the Landlord has failed to return her deposit. She is also seeking to recover the registered mail fees of \$9.59 incurred to conduct service of documents.

Analysis

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 undisputed version of events as discussed by the Tenant and corroborated by her documentary evidence.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended March 31, 2014, and the Landlord received the Tenant's forwarding address in writing on February 25, 2014.

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 deposit in full or file for dispute resolution no later than March 12, 2014. The Landlord 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 her security deposit plus interest in the amount of **\$1,600.00** (2 x \$800.00 + \$0.00 interest).

In regards to registered mail fees for bringing this application forward, I find that the Tenant has chosen to incur these costs that cannot be assumed by the Landlord. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Costs incurred due to a service method choice are not a breach of the Act. Therefore, I find that the Tenant may not claim mail costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*, and the claim is dismissed, without leave to reapply.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$1,650.00** (\$1,600.00 + \$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: August 27, 2014

Residential Tenancy Branch

