



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

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.

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 on July 17, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On July 28, 2014 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were simply copies of the documents she served to the Landlord on July 17, 2014.

On November 28, 2014 the Tenant submitted additional documents to the Residential Tenancy Branch. The Tenant stated that these documents were not served to the Landlord. As these documents were not served to the Landlord, they were not accepted as evidence for these proceedings.

On December 12, 2014 the Tenant submitted additional documents to the Residential Tenancy Branch. The Tenant stated that these documents were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 22, 2014 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were sent to the Tenant by registered mail on December 22, 2014. The Tenant stated that on December 24, 2014 she received a notice from Canada Post that she could claim a package of registered mail on December 30, 2014, which she presumes is the package mailed by the Landlord. She stated that she has not had an opportunity to pick up the package.

As the Landlord's evidence package has not yet been received by the Tenant and was not received by the Tenant at least seven days prior to the start of these proceedings, as is required by rule 3.15 of the Residential Tenancy Branch Rules of Procedure, I decline to accept this package as evidence for these proceedings. In determining that the Landlord's evidence should not be accepted, I was heavily influenced by my determination that the evidence is not relevant to the issue in dispute at these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

Background and Evidence

The Landlord and the Tenant agree:

- that the tenancy began on February 26, 2013
- that a security deposit of \$750.00 was paid
- that this tenancy ended on June 30, 2014
- 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
- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit
- that a condition inspection report was not completed at the start, or the end, of the tenancy.

The Tenant stated that on June 28, 2014 she posted a document which contained her forwarding address on the door of the rental unit. The Landlord stated that he did not receive this document.

The Tenant stated that on June 28, 2014 she left a document which contained her forwarding address on the counter of the rental unit. The Landlord stated that he did not receive this document.

The Tenant stated that on August 08, 2014 she mailed the Landlord a document, via registered mail, in which she provided the Landlord with a new forwarding address. The Landlord acknowledged receiving this forwarding address sometime in August of 2014.

The Landlord stated that he also received the Tenant's original forwarding address in the mail sometime in July of 2014. The Tenant stated that she did not send her forwarding address to the Landlord in July of 2014, however she had earlier testified that she mailed her Application for Dispute Resolution (which contained her forwarding address) to the Landlord on July 17, 2014.

Neither party was permitted to present evidence regarding the condition of the rental unit during the tenancy, or at the end of the tenancy, as that issue is not relevant to the issue in dispute at these proceedings.

Neither party was permitted to present evidence regarding any problems arising during this tenancy, as those issues are not relevant to the issue in dispute at these proceedings.

The Tenant indicated that she had intended to call a witness however she did not call this witness as the witness did not have evidence that was relevant to the issue in dispute at these proceedings.

Analysis

Section 38(1) of the *Residential Tenancy Act (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.

On the basis of the undisputed evidence, 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 and more than 15 days has passed since the tenancy ended and the forwarding address was received by the Landlord.

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.

Conclusion

The Tenant has established a monetary claim of \$1,500.00, which is double the security deposit and I grant a monetary Order in that amount. In the event that the Landlord does not voluntarily 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.

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: December 31, 2014

Residential Tenancy Branch

