



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and for the recovery of the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on February 12, 2015. The tenant stated that she tracked the package and found that the landlord had received it. Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

These parties attended a hearing on January 05, 2015, to address an application by the tenant for a monetary order. The tenant filed a copy of that decision. The tenancy had already ended and the Arbitrator granted the tenant a monetary order for the return of partial rent, prepaid utilities, the security deposit, the pet deposit and the filing fee.

During the hearing, the Arbitrator ordered the landlord to return the deposits in the total amount of \$600.00 within 15 days of the date of the hearing which would have been January 20, 2015. The tenant filed a letter written by his mother that on January 21, 2015, she found three cheques made out in the names of both tenants

The tenant filed a copy of the cheques along with a note from the landlord stating that the Arbitrator had made two calculation errors in the determination of the final amount owed. The errors were in the favour of both parties with a net benefit to the tenant.

The landlord also stated that despite the error, she was happy to pay the extra amount to the tenant. The total amount of the three cheques was \$1,264.52, as calculated by the Arbitrator

On January 21, 2015, the tenant filed an application for a correction and this correction was made the same day. The tenant was granted an amended amount of \$1,314.52. The tenant attempted to cash the cheques but was unsuccessful because the cheques were made out to both parties and the name of the female tenant was incorrect.

On January 27, 2015, the tenant sent the landlord the amended order along with a letter asking the landlord to pay the amended amount.

On February 02, 2015, the landlord applied for a correction and this correction was made on February 16, 2015. The landlord sent the tenant a money order dated February 17, 2015 for the amended amount.

The tenant confirmed that the landlord had paid the entire amount as per the amended order, but was claiming an additional \$600.00 because the landlord had not returned the security and pet deposits by January 20, 2015, as ordered to do so. The tenant stated that he had acquired information from the Residential Tenancy Branch Office that section 38 of the *Residential Tenancy Act*, applied and he was entitled to the doubling provision of s.38

Analysis

Based on the oral testimony and documentary evidence provided by the tenant, I find that the landlord was ordered to return the deposits by January 20, 2015. The landlord did so by placing three cheques in the mail box of the tenant on January 20, 2015, when no one answered the door.

The landlord wrote out the cheques in the names of both tenants and the tenant was unsuccessful in cashing the cheques. The landlord also wrote the female tenant's name as she knew it which was not her legal name.

Both parties applied for corrections and the order was amended twice, the second order amended on February 16, 2015. The landlord paid the amended amount on February 17, 2015, received by the tenant on February 23, 2015.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

The return of the deposits was determined in a hearing on January 05, 2015. The Arbitrator ordered the landlord to return the deposits by January 20, 2015. The amount to be returned was determined by the Arbitrator according to s.38.

Based on the tenant's testimony, I find that the landlord did so on January 20, 2015. Even if I find that the landlord did not comply with the Arbitrator's order, which I do not, s. 38 does not apply to the enforcement of the order.

The decision dated January 05, 2015, amended on January 21, 2015 and again on February 16, 2015 clearly states the following:

*A Monetary Order in the amount of ~~\$1,264.52~~ **\$1,156.66** has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.*

Accordingly, the tenant must enforce the order in the Small Claims Court of British Columbia, but since the tenant has already received the entire amount, there is no need for further action on the part of the tenant.

Since the return of the deposits was already addressed and ordered in a prior hearing and since the order can only be enforced in the Small Claims court, I dismiss the tenant's application for the return of double the deposits. Since the tenant has not proven his case, he must bear the cost of filing his own application.

Conclusion

The tenant's application is dismissed in its entirety.

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: March 11, 2015

Residential Tenancy Branch