



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord/respondent did not attend this hearing, although I waited until 1:14 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:00 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The tenant testified that she served the landlord with a copy of the tenant's dispute resolution hearing package by registered mail on August 15, 2015. The tenant provided receipts and tracking information for the mailing of the package. The tenant testified that the mail was sent to the landlord's address as set out in her residential tenancy agreement.

Residential Tenancy Policy Guideline No. 12 provides that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the tenant's evidence and pursuant to section 89 and 90 of the Act, I find that the landlord has been deemed served with the tenant's dispute resolution hearing package on August 20, 2015, 5 days after the mailing of the package.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began August 1, 2013 and continued until June 27, 2014. The rental amount was \$1850.00 during this tenancy. The tenant testified, supported by a copy of the receipt from the landlord, that she paid a \$1000.00 security deposit on July 30, 2013. She testified that, as of the date of this hearing, the landlord has not returned the tenant's security deposit.

The tenant testified that the landlord sold the rental property and that she was asked to leave on short notice. The tenant provided a copy of a mutual agreement to end tenancy signed by the tenant and the landlord. She also testified that the landlord agreed to pay some moving costs to the tenant as a result of the short notice. The landlord did pay moving expenses. Within the mutual tenancy agreement, the security deposit was not addressed.

The tenant testified that she vacated the rental unit on June 27, 2014 and, on July 5, 2014, she provided her forwarding address to the landlord. She provided a copy of this notice in her evidence package. She testified that, on at least two occasions, she spoke to the landlord and requested the return of her security deposit. The tenant testified that she was told by the landlord that he had spent enough on her and that he would not return her security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the evidence, both in testimony and documents submitted, is that the tenant provided a forwarding address in writing on July 5, 2014. The landlord had 15 days after July 10, 2014, the date when the forwarding address was deemed served to the landlord, to take one of the actions outlined above. The landlord has not taken either action.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The mutual agreement to end tenancy was submitted in documentary evidence. That agreement did not reference the tenant's security deposit. The tenant testified that she did not provide the landlord with any written or other authorization at the

end of this tenancy to retain any portion of her security deposit. Section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

Based on the evidence at this hearing and, on a balance of probabilities, I find that the landlord has neither made a claim against the security deposit nor returned the security deposit. I accept the submissions of the tenant that there was no agreement or authorization for the landlord to retain the security deposit. I therefore find that the tenant is entitled to a monetary award including \$1000.00, the amount of her security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

The tenant sought an order doubling her deposit in the circumstances. The tenant gave sworn testimony that she has not waived her rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of her security deposit with interest calculated on the original amount only. No interest is payable. I find the tenant is entitled to a monetary award in an amount equal to double the value of her security deposit, \$2000.00. No interest is payable over this period.

Having been successful in this application, I find further that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The tenant is entitled to a total monetary award payable by the landlord to the tenant as follows:

Item	Amount
Return of Security Deposit	\$1,000.00
Monetary Award for Landlords' Failure to Comply with s. 38(6) of the <i>Act</i>	1,000.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,050.00

Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant is provided with an Order in the above terms Should the landlord(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 10, 2015

Residential Tenancy Branch

