



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of the security deposit, an Order the landlord comply with the Act 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 to the landlord on September 22, 2015 via registered mail to the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service. The tenant obtained the address from the landlord.

The registered mail was returned to the tenant by Canada Post marked as unclaimed by the landlord.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act, however the landlord did not appear at the hearing. Refusal to claim registered mail does not allow party to avoid service or provide grounds for review consideration.

Issue(s) to be Decided

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

Background and Evidence

This six month fixed term tenancy commenced on December 1, 2013. Rent was \$1,400.00; the tenant paid a security deposit in the sum of \$1,400.00 and a key fob deposit in the sum of \$100.00. The tenant provided copies of processed cheques issued to the landlord in the sums claimed.

Once the fixed term ended the tenancy continued on a month-to-month basis.

On August 8, 2014 the tenant issued written notice ending the tenancy effective August 23, 2014. The notice provided the tenant's written forwarding address. A copy of the Notice was supplied as evidence. The landlord confirmed the notice, which was issued as the result of the landlord informing the tenant she wanted possession of the rental unit.

The parties met on August 23, 2014 to complete a move-out condition inspection report. The tenant supplied a copy of the report signed by both parties. The tenant disagreed with the report and did not agree to any deduction from the security deposit. The keys were left in the rental unit.

The landlord has not returned the security or key fob deposit.

The tenant deducted the \$700.00 deposit overpayment from her last month's rent owed, as allowed.

The tenant has claimed return of double the \$700.00 security deposit and return of the \$100.00 key fob deposit.

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 amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages before me and no written agreement was made at the end of the tenancy allowing deductions from the deposit.

I have no evidence that that landlord has repaid the deposit as required by section 38 of the Act. Therefore, I find that the tenant is entitled to return of double the \$700.00 security deposit paid to the landlord.

The tenant has provided proof of payment of a key fob deposit. I find pursuant to section 62(3) of the Act, on the balance of probabilities, that the tenant did return the key fob and that the tenant is entitled to return of the \$100.00 deposit paid.

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 \$1,550.00. 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 compensation in the sum of \$1,400.00, double the security deposit paid.

The tenant is entitled to compensation in the sum of \$100.00 for the key fob deposit.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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 20, 2015

Residential Tenancy Branch

