



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on September 17, 2014, to obtain a Monetary Order for the return of double their security deposit.

The hearing was conducted via teleconference and was attended by the Tenant who provided affirmed testimony. No one was in attendance at the teleconference hearing on behalf of the Landlord.

The Tenant provided documentary evidence that the Landlord was served notice of this application and the hearing documents by registered mail on September 25, 2014, to the address where the Tenant's rental basement suite was located. The Tenant testified that when she first moved into the rental unit the Landlord resided in the upper level of the house and she resided in the self-contained basement suite which had a shared laundry area.

The Tenant stated that a few months into her tenancy the Landlord began working out of town and would return home a couple times a month. The Tenant submitted that shortly after the Landlord began working out of town he rented a room in the upper level of his area of the house to a friend of the Tenant and the Landlord continued to reside in the house whenever he returned to town.

A copy of the written tenancy agreement was submitted into evidence which listed contact information for the Landlord consisting of a telephone number and the civic address of the house where the Tenant resided in the basement suite.

Section 89(1) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Section 90 of the *Act* provides that a document given or served in accordance with section 89 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

Based on the foregoing and the submissions of the Tenant, I find the Landlord was deemed served notice of this proceeding, on September 30, 2014, five days after they were mailed, pursuant to section 90 of the *Act*, and I continued in the absence of the Landlord.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order for the return of double her security deposit?

Background and Evidence

The Tenant testified that she entered into a month to month tenancy agreement which began on September 1, 2012. Rent of \$650.00 was due on or before the first of each month and on or before August 18, 2012 the Tenant paid \$325.00 as the security deposit, as per the tenancy agreement provided in evidence.

The Tenant submitted that she gave proper notice to end her tenancy effective June 30, 2014. On July 2, 2014 the Tenant's agent personally served the Landlord with her forwarding address in writing. The Tenant stated that the Landlord has refused to return her security deposit so she now seeks the return of double her deposit.

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

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 evidence is that the tenancy ended June 30, 2014, and the Landlord received the Tenants' forwarding address in writing on July 2, 2014. Therefore, the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 17, 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 deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find that the Tenant succeeded in proving the merits of her application, and I award her double the security deposit plus interest in the amount of **\$650.00** (2 x \$325.00 + \$0.00 interest).

Conclusion

The Tenant has been awarded a Monetary Order for **\$650.00**. 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: April 27, 2015

Residential Tenancy Branch

