



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

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 and to recover the filing fee from the Landlord for the cost of filing this application.

The female Tenant stated that on January 13, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

On May 07, 2015 the Tenant submitted evidence to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence at these proceedings. The female Tenant stated that these documents were served to the Landlord, via regular mail, at the service address noted on the Application. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

Background and Evidence

The Tenant stated:

- that in September of 2014 the Tenant met with the Landlord and entered into a tenancy agreement that was to commence on November 01, 2014;
- that a security deposit of \$325.00 was paid on October 16, 2014;
- that before the tenancy began the Landlord told the Tenant they could not move into the rental unit;
- that the Tenant did not move into the rental unit;
- that sometime in late October the Tenant sent her forwarding address to the Landlord at the service address, via regular mail;
- that after the forwarding address was mailed the female Tenant spoke with the Landlord's wife, who informed her that a security deposit refund had been mailed to the Tenant;

- 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; and
- that the Tenant does not know if the Landlord filed an Application for Dispute Resolution claiming against the security deposit.

The Tenant submitted an audio recording of a telephone conversation between the female Tenant and a female the Tenant believes is the Landlord's wife. This audio recording corroborates the Tenant's submission that the Tenant was told the security deposit had been refunded.

Analysis

On the basis of the undisputed evidence, I find that:

- the Tenant was unable to move into the rental unit on November 01, 2014;
- the tenancy therefore ended prior to November 01, 2014; and
- the Tenant provided the Landlord with a forwarding address, in writing, sometime in October of 2014.

Section 38(1) of the *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.

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.

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 \$700.00, which is comprised of double the security deposit and \$50.00 for the fee paid to file this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily 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: June 04, 2015

Residential Tenancy Branch

