



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This is the Tenant's Application for Dispute Resolution filed March 23, 2015, seeking return of the security deposit.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she served the Landlord with the Notice of Hearing and documentary evidence, by registered mail sent on March 25, 2015 to the Landlord's place of doing business. The Tenant provided a copy of the Canada Post receipt and tracking numbers in evidence. She also testified that she served the Landlord with additional documentary evidence, by registered mail sent on May 14, 2015. The Tenant provided a copy of the Canada Post receipt and tracking numbers for the additional evidence package in evidence.

Based on the Tenant's affirmed oral testimony and documentary evidence, I am satisfied that the Landlord was duly served with the Notice of Hearing documents and copies of the Tenant's documentary evidence by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing proceeded in his absence.

Issue to be Decided

Is the Tenant entitled to a monetary award pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The tenancy began on June 1, 2013, and ended on June 30, 2014. Monthly rent was \$900.00, due on the 1st day of every month. A security deposit in the amount of \$450.00 was paid by the "Ministry" on the Tenant's behalf at the beginning of the tenancy.

The Tenant testified that he gave the Landlord her forwarding address in writing on February 13, 2015, by registered mail. The Tenant provided a copy of the Canada Post receipt in evidence.

The Tenant testified that there was no written tenancy agreement or Condition Inspection Report completed at the beginning or the end of the tenancy.

The Tenant stated that the Landlord told her that he would return the security deposit to the “Ministry”, but that the “Ministry” has not received the refund. The Tenant provided a copy of a letter from the “Ministry” indicating that she must repay the benefits that she received.

The Tenant testified that she did not give the Landlord permission to retain any of the security deposit at the end of the tenancy.

Analysis

A security deposit is held in a form of trust by a landlord for a tenant, to be applied in accordance with the provisions of the Act. A landlord may not arbitrarily decide whether or not to keep the security deposit. Whether the security deposit was provided directly from the tenant, or by a third party, the landlord must comply with Section 38 of the Act. It is up to the tenant and the third party to determine whether or not the third party receives the security deposit refund at the end of the tenancy.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant’s forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit to the tenant; or
2. file an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit, in the amount of **\$900.00**.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$900.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 14, 2015

Residential Tenancy Branch

