



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant for double the return of the security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Landlord during the 12 minute duration of the hearing. Therefore, I turned my mind to the service of documents by the Tenant for this hearing.

The Tenant testified that he served the Landlord with a copy of the Application and the Notice of Hearing documents by registered mail on April 30, 2015. The Tenant provided the Canada Post tracking number into evidence prior to the hearing.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find that the Landlord was deemed served with the required documents on May 5, 2015 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Tenant.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Tenant testified that this tenancy began on December 1, 2014 and ended on February 26, 2015. There was no written tenancy agreement but the rent payable under the oral tenancy agreement was 500.00 on the first day of each month. The Tenant

testified that he paid the Landlord a \$250.00 security deposit on November 24, 2014. The Tenant provided a receipt to verify this amount paid.

The Tenant testified that the Landlord still retains the security deposit and he did not consent to the Landlord keeping it or making any deduction from it. The Tenant testified that he sent a handwritten letter to the Landlord on March 30, 2015 by registered mail to the Landlord's address which was the rental unit. The Tenant provided a copy of the Canada Post tracking number to verify service of the forwarding address in writing. The Canada Post website indicates that the Landlord received and signed for the document on April 31, 2015. As a result, the Tenant now seeks double the return of the security deposit pursuant to the Act.

The Tenant also claims \$21.00 associated with the mailing costs for documents sent in relation to these proceedings. The Tenant was informed that, apart from the filing fee, the Act does not allow for the awarding of costs incurred by each party in preparation for dispute resolution proceedings and this must be borne by each party.

Analysis

In the absence of the Landlord appearing for this hearing or providing documentary evidence to dispute the evidence presented during the hearing, I make the following findings based on undisputed evidence which I have considered on the balance of probabilities.

The Act defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the Landlord and Tenant established a verbal tenancy agreement which is recognized and enforceable under the Act.

Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it.

I accept the undisputed evidence of the Tenant that this tenancy ended on February 26, 2015. I also accept the undisputed evidence of the Tenant that he provided the Landlord

with a forwarding address in writing on March 30, 2015 by registered mail pursuant to Section 88(c) of the Act. I accept the Canada Post evidence before me that the Landlord received the forwarding address the next day on March 31, 2015.

There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenant's forwarding address or returned the security deposit back to the Tenant. Therefore, I find that the Landlord has failed to comply with Section 38(1) of the Act.

Section 38(6) of the Act stipulates 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 deposit. Based on the foregoing, I find the Tenant is entitled to double the return of the security deposit in the amount of **\$500.00**.

As the Tenant has been successful in this matter, I also award the Tenant the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is **\$550.00**. The Tenant is issued with a Monetary Order which must be served on the Landlord. The Tenant may then file and enforce this order in the Provincial Court (Small Claims) as an order of that court if the Landlord fails to make payment in accordance with the Tenant's written instructions. Copies of the order are attached to the Tenant's copy of this decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant's claim for the return of double the security deposit and recovery of the filing fee is granted in the amount of \$550.00.

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: October 01, 2015

Residential Tenancy Branch

