



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 fee for filing this Application.

The Tenant stated that on May 05, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch on May 06, 2015 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.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

Background and Evidence

The Tenant stated that:

- the tenancy began on October 01, 2014;
- a security deposit of \$600.00 and a pet damage deposit of \$600.00 was paid;
- this tenancy ended on March 01, 2015;
- he sent his forwarding address to the Landlord, via registered mail, on March 25, 2015;
- the registered mail was returned to his by Canada Post with indication it had been "unclaimed";
- he sent his forwarding address to the Landlord again, via regular mail;
- he did not authorize the Landlord to retain the security deposit;
- the Landlord returned \$600.00 of the security deposit/pet damage deposit on March 01, 2015;
- on March 16, 2015 the Landlord sent the Tenant another \$110.00 by email;
- the Tenant did not process the \$110.00 email payment; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant submitted Canada Post documentation that corroborates his testimony that he mailed documents to the Landlord, via registered mail, on March 25, 2015.

Analysis

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.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the full security deposit and pet damage deposit; she has not filed an Application for Dispute Resolution claiming against the deposits; and more than 15 days has passed since the tenancy ended and the forwarding address is deemed 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 and the pet damage deposit.

I find the Tenant's Application for Dispute Resolution has merit and that he is entitled to recover the fee for filing this Application.

Conclusion

The Tenant has established a monetary claim of \$2,450.00, which is comprised of double the security deposit/pet damage deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. This claim must be reduced by the \$600.00 the Landlord returned to the Tenant on March 01, 2015.

On the basis of these calculations, I grant the Tenant a monetary Order for \$1,850.00. In the event the Landlord does not voluntarily 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.

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 05, 2015

Residential Tenancy Branch

