



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A A matter regarding WING LEE HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for the return of the security deposit.

The Tenant stated that on July 07, 2015 he delivered the Application for Dispute Resolution and the Notice of Hearing to the Landlord's business office. The Agent for the Landlord stated that the Landlord received these documents by registered mail, although he does not know the date it was received. As the Agent for the Landlord acknowledged receipt of these documents, I find these documents have been sufficiently served in accordance with section 71(2) of the *Residential Tenancy Act (Act)*.

On October 04, 2015 the Landlord submitted four pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was sent to the Tenant by registered mail on October 06, 2015. The Tenant stated that he received notice that he had registered mail but he was simply too busy to pick the mail up before it was returned to the sender. I find that this evidence was served in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings. The Tenant cannot avoid service of documents by not picking up registered mail.

On November 03, 2015 the Landlord submitted one page of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenant. As this evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

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

Background and Evidence:

The Landlord and the Tenant agree that:

- a security deposit of \$375.00 was paid;
- the tenancy ended May 31, 2015
- the Tenant provided a forwarding address, in writing, on June 01, 2015 by writing it on the condition inspection report;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Landlord stated that:

- on June 04, 2015 the Landlord mailed a \$375.00 cheque to the Tenant;
- this cheque represented a full refund of the Tenant's security deposit;
- the cheque was mailed to unit 4 at the forwarding address provided by the Tenant rather than to unit 11, which is the Tenant's correct address;
- upon reviewing the forwarding address written on the condition inspection report he could understand why someone would have misinterpreted the address to be unit 4 rather than unit 11;
- the cheque was never returned to the Landlord;
- the Landlord did not realize the cheque had been mailed to the incorrect address until the Tenant served the Landlord with this Application; and
- the Landlord did not replace the cheque after being served with the Application because the Tenant insisted on receiving double his security deposit.

The Tenant stated that:

- after the served the Landlord with this Application for Dispute Resolution he was informed that a cheque had been mailed to the incorrect address;
- he told the Landlord he wanted double his security deposit;
- he was never provided with a copy of the condition inspection report that was completed at the end of the tenancy; and
- because he was never provided with a copy of the final condition inspection report he does not know if it was reasonable for the Landlord to have misread his forwarding address.

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 file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Tenant provided a forwarding address to the Landlord on June 01, 2015 by writing it on the condition inspection report that was completed at the end of the tenancy. As that report was not submitted in evidence, I am unable to conclude whether the forwarding address was clearly legible.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that on June 04, 2015 the Landlord mailed a full refund of the security deposit to the incorrect address. In the absence of evidence to the contrary I accept that this was a legitimate administrative error as I find it highly unlikely that a landlord would intentionally send a payment to an incorrect address.

On the basis of the undisputed evidence, I find that the Landlord realized the security deposit had been mailed to an incorrect address when they received the Tenant's Application for Dispute Resolution. Upon realizing their administrative error, I find that the Landlord should have immediately complied with section 38(1) of the *Act*.

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 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, which is \$750.00.

Conclusion:

I grant the Tenant a monetary Order for \$750.00. 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: December 16, 2015

Residential Tenancy Branch

