



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding POWELL RIVER APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenant's application for return of the security deposit and pet damage deposit. The landlord did not appear at the hearing. The tenant testified that two registered mail packages were sent to the named landlords on July 21, 2015 at the landlord's service address, as seen on the tenancy agreement. The tenant testified that the registered mail packages were returned to her as being unclaimed so she personally delivered both packages in the mail slot at the landlord's office at the residential property on September 3, 2015. The tenant subsequently contacted the property manager of the residential property who confirmed receipt of the registered mail packages and stated the owner would not take them so the property manager put them in the owner's vehicle. The tenant provided the registered mail receipts, including tracking numbers, as proof of service along with print-outs from Canada Post which confirmed the tenant's submissions. Section 90 of the Act deems a person to have received documents five days after mailing, even if the recipient refuses to accept or pick up their mail. Section 90 also deems a person to have received documents three days after they are placed in a mailbox at the service address.

In this case, I accepted that the tenant met her obligation with respect to serving the landlord when she sent the registered mail to the landlord's service address on July 21, 2015 and I found the landlord deemed served under section 90 of the Act. The tenant went beyond her obligation in making a second attempt to deliver the hearing documents to the landlord so as to find resolution to this dispute which I found commendable. I was satisfied the landlord is avoiding service and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit and/or pet damage deposit, and if so, in what amount is the tenant entitled to receive?

Background and Evidence

The tenancy started June 1, 2011 on a month to month basis for the monthly rent of \$600.00 due on the 1st day of every month. The tenant provided a copy of the tenancy agreement as evidence.

The tenant paid a \$300.00 security deposit on May 18, 2011 to the manager at the time. The tenant acquired a pet during the tenancy and paid a pet damage deposit in the amount of \$300.00 to the property manager on February 10, 2012. The tenant produced two receipts showing payment of the security deposit and pet damage deposit.

The tenant gave a written notice to end tenancy dated May 30, 2015 to be effective June 30, 2015. The notice to end tenancy included the tenant's forwarding address. A copy of the notice was provided as evidence.

I noted that there were no condition inspection reports in the evidence before me. The tenant testified that the landlord did not prepare condition inspection reports. The tenant stated that at the end of the tenancy the property manager inspected the unit with the tenant; the manager indicated the unit looked good; the manager did not seek the tenant's authorization to make deductions from the deposits; and, the manager indicated that the deposits would be available for the tenant on July 15, 2015. The tenant testified that there was no refund cheque waiting for her at the landlord's office when she checked on July 15 and July 16, 2015 and no refund was sent to the tenant at her forwarding address. The tenant confirmed that the forwarding address she provided to the landlord on her notice to end tenancy is still current.

The pointed to the dispute codes appearing on her application and stated that she seeks return of double the security deposit and pet damage deposit.

Analysis

Section 38(1) of the Act provides that a landlord must either return the security deposit and/or pet damage deposit to the tenant or make an Application for Dispute Resolution to claim against the deposit unless the tenant has lawfully authorized the landlord to retain all or part of the deposit(s) in writing or the landlord has otherwise obtained a legal right under the Act to retain all or part of the security deposit or pet damage deposit. The time limit to refund or make a claim against the deposit(s) is within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit and/or pet damage deposit

In this case, I accept the undisputed documentary evidence and submissions of the tenant that she paid a security deposit of \$300.00 and a pet damage deposit of \$300.00 to the landlord or agent for the landlord with respect to this tenancy. I was not provided any evidence to suggest the tenant extinguished her right to return of the deposits. I was not provided any evidence to suggest the tenant authorized the landlord to retain any part of the deposit(s) in writing. Nor, did the landlord file an Application for Dispute Resolution to gain the Director's authorization to retain any part of the deposits.

Based upon the notice to end tenancy presented to me and undisputed submissions of the tenant, I am satisfied the landlord was provided the tenant's forwarding address in writing on or about May 30, 2015. Since the tenancy ended on June 30, 2015, which is the later date, I find the landlord was obligated to comply with section 38(1) of the Act by either refunding the deposits to the tenant or filing another Application for Dispute Resolution to claim against the deposits by July 15, 2015 and since the landlord did neither I find the landlord must pay the tenant double the security deposit and pet damage deposit pursuant to section 38(6) of the Act. Therefore, I grant the tenant's application and I further award the tenant recovery of the \$50.00 filing fee she paid for this application.

In light of the above, I provide the tenant with a Monetary Order in the total amount of \$1,250.00 [calculated as $(\$300.00 + \$300.00) \times 2 + \$50.00$]. To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant has been awarded return of double the security deposit and pet damage deposit, and recovery of the filing fee, in the total amount of \$1,250.00. The tenant has been provided a Monetary Order in this amount to serve and enforce upon the landlord as necessary.

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: January 08, 2016

Residential Tenancy Branch

