



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

The Tenant is applying for return of the security deposit and recovery of the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents and copies of his documentary evidence to the Landlord, by registered mail, to the Landlord's address for service on July 29, 2015. He testified that the registered mail was returned to him, unclaimed. The Tenant provided a copy of the registered envelope in evidence. The envelope contains the tracking number and indicates that it was mailed to the Landlord at the address provided on the tenancy agreement as the Landlord's address for service.

Based on the Tenant's affirmed testimony and documentary evidence, I find that the Landlord was duly served pursuant to the provisions of Section 89 of the Act. Section 90 of the Act deems service in this manner to be effective 5 days after mailing. The Landlord did not sign into the Hearing, which remained open for 10 minutes, and the Hearing continued in the Landlord's 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

A copy of the tenancy agreement was provided in evidence. The tenancy began on July 1, 2013. Monthly rent was \$650.00, due on the 1st day of every month. The Tenant paid a security deposit in the amount of \$325.00 at the beginning of the tenancy. The tenancy ended on April 30, 2015.

The Tenant testified that he did not give the Landlord permission to retain any of his security deposit at the end of the tenancy. He stated that no Condition Inspection Reports were completed at the beginning or the end of the tenancy.

The Tenant stated that he provided his forwarding address by registered mail, but it was returned to him unclaimed. He stated that he also provided his forwarding address in writing on May 14, 2015, by letter. The Tenant testified that his girlfriend hand delivered the letter, a copy of which was provided in evidence.

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.

The Act requires a tenant to provide a forwarding address within one year of the end of the tenancy date in order to be entitled to return of the security deposit.

Section 38(1) of the Act provides that (unless a landlord has the tenant's 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 in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Based on the undisputed testimony of the Tenant, I find that the Landlord did not file an application for dispute resolution against the security deposit, or return the full amount of the security deposit within 15 days of receipt of the Tenant's forwarding address in writing.

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 **\$650.00**.

The Tenant has been successful in his Application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$700.00** 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: January 13, 2016

Residential Tenancy Branch

