



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on August 6, 2015. The Tenant filed seeking a Monetary Order for the return of double their security deposit plus recovery of their filing fee.

The hearing was conducted via teleconference and was attended by the Tenant. No one was in attendance on behalf of the Landlord. The Tenant provided affirmed testimony that he served the Landlord with notice of this application and this hearing by registered mail on August 11, 2015. Canada Post tracking information was submitted by the Tenant.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Based on the undisputed evidence of the Tenant, I find the Landlord was deemed served notice of this application and proceeding on August 16, 2015, in accordance with section 90 of the *Act*. Therefore, I proceeded to hear the Tenants undisputed evidence in absence of the Landlord.

Issue(s) to be Decided

Has the Tenant proven entitlement to double the return of her security deposit?

Background and Evidence

The Tenant entered into a verbal tenancy agreement that began on April 1, 2014. Rent of \$1,550.00 was payable on the first of each month. On or before April 1, 2014 the Tenant paid \$1,550.00 as the security deposit.

In August 2014 the Tenant served the Landlord notice to end his tenancy effective September 30, 2014. On July 15, 2015 the Tenant served the Landlord with his forwarding address in writing and requested the return of his security deposit via registered mail. Canada Post receipts were submitted into evidence. The Tenant testified the Landlord has ignored his requests for the return of his deposit. He stated he now seeks the return of double his security deposit.

Analysis

The *Residential Tenancy 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.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Given the evidence before me, in the absence of any evidence from the landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and corroborated by their evidence. Based on the foregoing, I find the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the effective date of the Tenant's notice was September 30, 2014 and he vacated the unit by that date and the tenancy September 30, 2014. The Landlord was served the Tenant's forwarding address via registered mail on July 15, 2015. Therefore, the Landlord is deemed to have received the Tenant's forwarding address on July 20, 2015, five days after it was mail, pursuant to section 90 of the *Act*. Therefore, the Landlord was required to return the Tenant's full \$1,550.00 security deposit or file for dispute resolution no later than August 4, 2015, in accordance with section 38(1) of the *Act*. The Landlord did neither.

As per the foregoing, I find the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$1,550.00 security deposit since April 1, 2014.

Based on the above, I find the Tenant has succeeded in proving the merits of his application and I award him double the security deposit in the amount of **\$3,100.00** (2 x \$1,550.00).

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

The Tenant has been issued a Monetary Order for **\$3,150.00** (\$3,100.00 + \$50.00). This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenant was successful with their application and was issued a Monetary Order in the amount of **\$3,150.00**.

This decision is final, legally binding, and 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: March 17, 2016

Residential Tenancy Branch