



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 08, 2015 the Application for Dispute Resolution and the Notice of Hearing were served to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On October 19, 2015 the Tenant submitted 15 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on October 19, 2015 or October 20, 2015. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 20, 2016 the Landlord submitted 25 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenant on January 19, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 21, 2016 the Tenant submitted 3 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on January 21, 2016 or January 22, 2016. The Landlord denied receiving this evidence. The Tenant was advised that this evidence would not be accepted as evidence, as the Landlord did not acknowledge receiving it.

The Tenant was advised that the hearing would proceed in the absence of the evidence she submitted on January 21, 2016; that the Tenant could speak to the evidence she submitted on January 21, 2016; and at any point in the hearing she felt it necessary for her to view the evidence she could request an adjournment for the purposes of re-serving that evidence to the Landlord. The hearing concluded without the Tenant requesting an adjournment.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The parties were advised that they would not be permitted to testify regarding the condition of the rental unit at the end of the tenancy, as that is not an issue in dispute at these proceedings. The Landlord was advised that he has the right to file an Application for Dispute Resolution if he believes he is entitled to compensation arising from this tenancy.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- a security deposit of \$1,000.00 was paid;
- the Landlord did not schedule a time to complete a condition inspection report at the start of the tenancy;
- this tenancy ended on September 15, 2015;
- the Tenant left a note on the counter in the rental unit at the end of the tenancy, in which the Tenant provided the Landlord provided a forwarding address;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord mailed the Tenant a cheque for \$535.20, which represented a partial return of the security deposit;
- the Landlord subsequently cancelled that cheque so it could not be cashed;
- the Tenant has not received a refund of any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

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 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.

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

Conclusion:

The Tenant has established a monetary claim of \$2,050.00, which includes double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. 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: April 25, 2016

Residential Tenancy Branch