



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On December 23, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to recover his security deposit, for “other”, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on December 23, 2015 his Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord at the Landlord’s service address, via registered mail. He was unable to provide a Canada Post tracking number nor did he submit Canada Post documentation that corroborates this statement. I note, however, that the Landlord refers to the Tenant’s Application for Dispute Resolution in documents he submitted to the Residential Tenancy Branch on April 29, 2016. I therefore find that these documents have been served to the Landlord; however the Landlord did not appear at the hearing.

On January 08, 2016 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage, for “other”, and to recover the fee for filing this Application for Dispute Resolution. The Tenant stated that he was not aware the Landlord had filed an Application for Dispute Resolution.

Preliminary Matter

The hearing was scheduled for 1:00 p.m. on July 28, 2016. The Tenant attended at the scheduled start time but by the time the teleconference was terminated at 1:12 p.m., the Landlord had not appeared.

I find that the Landlord failed to diligently pursue his Application for Dispute Resolution and I dismiss his Application without leave to reapply.

Issue(s) to be Decided

Should the security deposit be returned to the Tenant?

Background and Evidence

The Tenant stated that:

- the tenancy began on January 11, 2012;
- a security deposit of \$750.00 was paid;
- this tenancy ended on July 01, 2015;
- the rental unit was jointly inspected at the start of the tenancy and he thinks a condition inspection report was completed;
- the rental unit was jointly inspected at the end of the tenancy but he does not think a condition inspection report was completed;
- on July 01, 2015 the Tenant mailed a forwarding address to the Landlord's service address;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit; and
- the Landlord did not return any portion of 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 and there is no evidence that he filed an Application for Dispute Resolution within 15 days of the date the tenancy ended and the date he received the forwarding address that was mailed on July 01, 2015.

A document that is served by mail is deemed to have been received on the fifth day after it was mailed. I therefore find that the forwarding address that was mailed on July 01, 2015 was deemed received on July 06, 2015.

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, in the amount of \$1,550.00, which is double the security deposit and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for \$1,550.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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: July 29, 2016

Residential Tenancy Branch