



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 February 01, 2016 the Application for Dispute Resolution, the Notice of Hearing, and two documents the Tenant submitted with the Application were sent to the Landlords, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord stated that she was representing the male Landlord at the proceedings.

On August 12, 2016 the Landlords submitted 6 pages of evidence and 14 photographs. The Landlord stated that this evidence was sent to the Tenant, via registered mail, on August 12, 2016 and was subsequently returned by Canada Post as it was unclaimed. The Landlord cited a Canada Post tracking number to corroborate her testimony that the evidence was mailed. On the basis of the Landlord's testimony, I accept that the Landlords' evidence package was served to the Tenant in accordance with section 88 of the *Residential Tenancy Act (Act)*.

The Tenant stated that she did not receive notification from Canada Post that she had received registered mail and she did not receive the Landlords' evidence package. In the absence of evidence to the contrary I accept the Tenant's testimony that she did not receive notification from Canada Post that registered mail had been sent to her. I find it entirely possible that the notification was inadvertently lost or improperly delivered by Canada Post.

The Landlord was advised that I would be granting an adjournment to provide the Landlords' the opportunity to re-serve their evidence package if the Landlord wanted me to physically view any document submitted as evidence by the Landlords. My decision to grant an adjournment was based on my determination that the Tenant should be given the opportunity to consider the Landlords' evidence, given that she did not receive it, and by my determination that an adjournment will not unfairly prejudice either party.

The Landlord and the Tenant were given the opportunity to present relevant oral evidence, including testimony related to documents that had been submitted as evidence; to ask relevant questions; and to make relevant submissions.

At the conclusion of the hearing the Landlord stated that she is satisfied that she was able to present her submissions orally and she stated that she does not need me physically view any document submitted as evidence by the Landlords. The hearing was therefore not adjourned and this decision was made after considering only the testimony provided at the hearing and the two documents submitted by the Tenant.

Neither party was permitted to give evidence regarding the condition of the rental unit at the end of the tenancy, as that matter is not relevant to whether or not the security deposit was returned/retained in accordance with the *Act*. The Landlords retain the right to file an Application for Dispute Resolution if they feel the Tenant owes money for rent or damage to the unit.

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:

- the Tenant was living in the rental unit before the Landlords purchasing the rental unit;
- the Tenant paid a security deposit of \$425.00 and a pet damage deposit of \$150.00 to the individual who was her landlord when she moved into the rental unit;
- the tenancy ended on December 01, 2015;
- the Tenant did not authorize the Landlords to retain any portion of the security deposit or pet damage deposit;
- the Landlords did not return any portion of the security deposit or pet damage deposit; and
- the Landlords did not file an Application for Dispute Resolution claiming against the security deposit or pet damage deposit.

The Tenant stated that on December 15, 2015 she posted a document on the Landlords' door, in which she provided a forwarding address. The Landlord stated that this document was located at the base of their door on December 15, 2015.

The Landlord stated that:

- in February of 2016 the Landlords obtained a bank draft in the amount of \$650.00;
- she attempted to contact the Tenant on several occasions for the purposes of returning the security deposit and pet damage deposit, but was unable to make do so;
- the Landlords never mailed the bank draft to the Tenant as they were concerned it would not be delivered to the forwarding address provided by the Tenant; and
- the Landlords have since returned the bank draft to the bank and recovered the funds.

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 Landlords failed to comply with section 38(1) of the *Act*, as the Landlords have not repaid the security deposit/pet damage 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.

In adjudicating this matter I have placed no weight on the Landlord's testimony regarding the bank draft they obtained for the purposes of returning the security deposit/pet damage deposit to the Tenant. Given that the bank draft was not obtained until February of 2016, I would conclude that the Landlords had failed to comply with section 38(1) of the *Act* even if they had given the bank draft to the Tenant, as the bank draft was obtained more than fifteen days after the tenancy ended and the Landlords received the forwarding address.

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 and pet damage 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 \$1,250.00, which represents double the security deposit and pet damage deposit and \$100.00 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 Landlords do 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: September 14, 2016

Residential Tenancy Branch