



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for the return of the security deposit.

The female Tenant stated that on July 28, 2016 the Application for Dispute Resolution, the Notice of Hearing, and nine pages of evidence the Tenants submitted to the Residential Tenancy Branch on August 26, 2016 were sent to the Landlord, via registered mail. The Agent for the Landlord stated that he believes these documents were received by the Landlord and they were, therefore, accepted as evidence for these proceedings.

On September 06, 2016 the Landlord submitted one document to the Residential Tenancy Branch. The Agent for the Landlord stated that he does not know if this document was served to the Tenants as evidence. The female Tenant stated that this document was not received. As the Landlord has failed to establish that this document was served to the Tenant, it was not accepted as evidence for these proceedings.

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

Neither party was permitted to raise issues not directly related to whether or not the security deposit was returned in accordance with the *Residential Tenancy Act (Act)*. The Landlord retains the right to file an Application for Dispute Resolution if he believes the Tenants owe money in regards to this tenancy.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Agent for the Landlord and the Tenants agree that:

- a security deposit of \$600.00 was paid;
- the tenancy was scheduled to end on June 30, 2016, although the Tenants vacated the unit on June 29, 2016;
- the Landlord did not schedule a time to complete a condition inspection report at the start of the tenancy;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit, in writing;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The female Tenant stated the rental unit was jointly inspected at the start of the tenancy but the Landlord did not complete a condition inspection report. The Agent for the Landlord stated that he does not know if a condition inspection report was completed at the start of the tenancy.

The female Tenant stated that sometime in July of 2016, after the Tenants filed their Application for Dispute Resolution, the Tenants sent the Landlord a letter, in which the Tenants provided a forwarding address. The Agent for the Landlord stated that he does not know if the Landlord received the letter that was allegedly mailed in July of 2016.

Analysis:

On the basis of the testimony of the female Tenant and in the absence of evidence to the contrary, I find that the Tenants provided the Landlord with a forwarding address, in writing, by mailing it to him in July of 2016. I find that this document was served in accordance with section 88(c) of the *Act*.

Section 90(a) of the *Act* stipulates that a document that is served by mail is deemed received five days after it is mailed. As the Agent for the Landlord does not know if the the Landlord received the document that was mailed in July of 2016, I find that the document is deemed received by the Landlord on the fifth day after it was mailed. As the Tenants are not certain when in July the document was mailed, I find that it is deemed received on August 05, 2016, which reflects the possibility that it was mailed on July 31, 2016.

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 Tenants double the security deposit.

In adjudicating this matter I considered the fact that the Tenants did not provide their forwarding address, in writing, to the Landlord until after they had served him with notice of these proceedings. Given that the Landlord was not obligated to return the security deposit until they received the Tenants' forwarding address, in writing, I find that the Tenants filed their Application for Dispute Resolution prematurely.

The issue to be determined is whether or not the Application for Dispute Resolution should be dismissed because it was filed prematurely, and I find that it should not. I find that if I dismissed this Application for Dispute Resolution and the Tenants immediately filed another Application for Dispute Resolution the results would be the same, because the Landlord has still not returned the security deposit or filed an Application after receiving the forwarding address. I therefore find that it is not in the best interests of either party to dismiss the Application for Dispute Resolution.

Conclusion:

The Tenant has established a monetary claim of \$1,200.00, which is double the security deposit, and I am issuing a monetary Order in that amount. In the event 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: September 15, 2016

Residential Tenancy Branch