



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ovation Condominium Holdings Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing were sent on August 12, 2016 to the landlord, via registered mail. A Canada Post tracking number and receipt was provided as evidence of service. Service was completed to the property owners' address indicated on a mutual agreement to end the tenancy signed by the parties on June 18, 2016.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 of the Act.

The landlord did not appear at the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Background and Evidence

The tenancy commenced on June 1, 2015. A security deposit in the sum of \$500.00 was paid. A copy of the tenancy agreement, signed with a different landlord name than that indicated as the respondent was supplied as evidence.

The tenant said that half-way through the tenancy the landlord transferred the tenancies to a new landlord and that new landlord was named as the respondent. The respondent assigned a realty company to act as agent; referred to as A.B.

On June 8, 2016 the tenant and property owner signed a mutual agreement to end the tenancy effective July 1, 2016. A copy of the agreement was supplied as evidence. The mutual agreement provided an address for the landlord; which was used for service of notice of this hearing.

The tenant and agent, A.B. had agreed to meet on July 1, 2016 to complete a move-out condition inspection. The agent was unable to attend and asked the tenant to leave the keys through the mail slot at his office.

On July 1, 2016 the tenant dropped off the keys and a letter that contained his forwarding address, through the mail slot at the agents' realty office. On July 1, 2016 the tenant sent the agent A.B., the owner and another agent an email containing the forwarding address. A copy of the email was provided as evidence. None of the parties replied to the email.

On July 8, 2016 the tenant mailed a letter to the property owner, via registered mail. The tenant submitted the envelope and Canada Post tracking information. The letter was unopened and marked as unclaimed by Canada Post. I opened the letter during the hearing. The tenant had addressed the mail to the company and to the owner. The tenant used the address provided by the owner on the mutual agreement to end tenancy, signed by the owner. The tenant provided his forwarding address and set out efforts made to date to obtain the security deposit. The tenant explained he confirmed the keys and fobs had been received at the realty office and that the address had been given with those items.

The tenant has not received any portion of the deposit.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find pursuant to section 90(d) of the Act that the landlord received the tenants' written forwarding address on the third day after the address was placed in the mail slot of the landlords' agent on July 1, 2016. The tenant also served the landlord the address effective July 13, 2016 by sending the registered mail on July 8, 2016. A failure to claim mail does not allow a party to avoid service.

I have no evidence before me that that landlord has repaid the deposit or submitted a claim against the deposit, in accordance with the Act.

Therefore, I find pursuant to section 38(6) of the Act that the tenant is entitled to return of double the \$500.00 security deposit paid to the landlord.

As the tenants' application has merit I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary order in the sum of \$1,100.00. In the event that the landlord does not 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.

Conclusion

The tenant is entitled to return of double the security deposit.

The tenant is entitled to recover the filing fee cost from the landlord.

This decision is final and 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: October 06, 2016

Residential Tenancy Branch

