



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for the return of the security deposit.

The Tenant stated that on May 15, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of all of the aforementioned documents, with the exception of 4 photographs. The evidence the Landlord acknowledged receiving was accepted as evidence for these proceedings.

The Tenant was advised that the 4 photographs the Landlord did not acknowledge receiving would not be accepted as evidence for these proceedings. She was given the opportunity to adjourn the hearing for the purposes of re-serving the photographs or to proceed with the hearing with the understanding that she could request an adjournment if she concluded, during the hearing, that it was necessary for me to view the photographs. The Tenant opted to proceed with the hearing and the hearing was concluded without a request for an adjournment.

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 give evidence regarding the condition of the rental unit, as that evidence is not relevant to whether or not the Landlord complied with section 38 of the *Residential Tenancy Act* (Act).

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:

- this tenancy began prior to the Landlord purchasing the property on February 01, 2016;
- the tenancy continued after the Landlord purchased the property;
- the Tenant paid a security deposit of \$350.00 to the original Landlord;
- the Tenant mailed her forwarding address to the Landlord on May 04, 2016;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit;
- on June 02, 2016 the Landlord attempted to refund the security deposit of \$350.00, via e-transfer; and
- the Tenant refused to accept the e-transfer.

The Tenant stated that the tenancy ended on May 01, 2016 and the Landlord stated that the tenancy ended on April 29, 2016.

Analysis:

On the basis of the testimony provided at the hearing I find that the tenancy ended no later than May 01, 2016.

On the basis of the undisputed testimony I find that the Tenant mailed her forwarding address to the Landlord on May 04, 2016, which he acknowledged receiving. Pursuant to section 90 of the *Residential Tenancy Act (Act)*, I find that this address is deemed to have been received on May 09, 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 Tenant double the security deposit.

In reaching this conclusion I have placed no weight on the undisputed testimony that the Tenant refused a refund of the \$350.00 security deposit that was offered on June 02, 2016 as by that point the Landlord had missed the 15 day deadline.

Conclusion:

The Tenant has established a monetary claim of \$700.00, which is double the security deposit, 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: November 22, 2016

Residential Tenancy Branch