



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 as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order for the return of double his security deposit under the *Act*.

The tenant attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present his evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on August 5, 2016. The tenant provided a registered mail tracking number in evidence which has been included on the cover page of this decision for ease of reference. The tenant confirmed that the name and address on the registered mail package matched the name of the landlord and the service address provided by the landlord on the tenancy agreement which was also submitted in evidence. According to the online registered mail tracking website, the landlord refused the registered mail package and it was ultimately returned to the sender as a result.

Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. As a result, I find the landlord was deemed served as of August 10, 2016 with the Notice of Hearing, Application and documentary evidence. I also note that refusal of a registered mail package does not constitute a ground for a Review Consideration.

In addition to the above, the tenant testified that he also served the landlord again personally on August 12, 2016 at the landlord's residence in the early afternoon and that the personal service was witnessed by K.D. who lives on Quadra Island. I find the landlord has been sufficiently served under the *Act*.

Issue to be Decided

- Is the tenant entitled to the return of double their security deposit under the *Act*?

Background and Evidence

As indicated above, a copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 1, 2013. The tenant stated that he paid a security deposit of \$250.00 at the start of the tenancy which is supported by the tenancy agreement. The tenant affirmed that he vacated the rental unit on March 15, 2016 and that he provided his written forwarding address to the landlord by hand on June 1, 2016 at the rental unit address. The tenant stated that after he filed for dispute resolution in August 2016, the landlord paid him \$250.00 which he successfully deposited. The tenant is seeking \$250.00 for double the return of the security deposit, plus the recovery of the cost of the filing fee

The tenant testified that he has not provided the landlord with permission to retain any portion of his \$250.00 security deposit and stated that he was not served with an application for dispute resolution by the landlord claiming against his security deposit.

Analysis

Based on the above, and the undisputed documentary evidence and undisputed testimony of the tenant, and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

The tenant confirmed that he did not give permission to the landlord to retain any portion of his security deposit, which has accrued no interest to date. There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

As a result, I find the landlord was served with the tenant's written forwarding address on June 1, 2016, the date the tenant testified he hand delivered it to the landlord. I also

accept that the landlord returned the \$250.00 security deposit in August 2016 which is well beyond the 15 day timeline set out in section 38 of the *Act*.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or with the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenant within 15 days of June 1, 2016 as required by the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Having made the above findings, I order pursuant to section 38 and 67 of the *Act*, that the landlord pay the tenant the amount of **\$250.00**, comprised of double the security deposit on the original amount held of \$250.00. In addition, as the tenant's application was successful, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**.

I find the tenant has established a total monetary claim of **\$350.00** comprised of \$250.00 for the doubled security deposit, plus \$100.00 for the recovery of the cost of the filing fee. Pursuant to section 67 of the *Act* I grant the tenant a monetary order in the amount of **\$350.00**.

Conclusion

The tenant's application is successful.

The tenant has established a total monetary claim of \$350.00 comprised of \$250.00 for the doubled security deposit, plus \$100.00 for the recovery of the cost of the filing fee. The tenant has been granted a monetary order in the amount of \$350.00. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: February 10, 2017

Residential Tenancy Branch