



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes

MNSD, CNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for the return of their security deposit, and recover their filing fee.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided proof of registered mail service tracking numbers for the mail claimed by the tenant to have been sent to both of the landlord's known mailing addresses. The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenant's undisputed testimony in this matter is as follows. On or about August 15, 2016 the tenants and landlord entered into an oral tenancy agreement for the rental unit agreeing to the monthly rent amount and in respect to the security deposit. At the request of the landlord the tenant drafted a written tenancy agreement and the tenant and landlord each signed the agreement. The landlord then disclosed to the tenant that according to strata regulations they were not authorized to rent out their unit and therefore one of the tenants would have to pose as the landlord's cousin. At first the tenant agreed and on reflection the tenant soon determined they could not do as the landlord requested of them and asked the landlord for the return of their deposit. The landlord protested and the tenant involved the police to retrieve their deposit to no avail.

The tenant testified that to date they have not communicated with the landlord other than to advance their claim on application.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I find that **Section 16** of the Act states that the rights and obligations of a landlord and a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Pursuant to the undisputed evidence of the tenant I find that the tenant and landlord entered into a tenancy agreement subsequently secured by a deposit in the claimed amount of \$1500.00. I find the Act applies to this tenancy.

In respect to the security deposit I accept the tenant's evidence they protested and orally requested the landlord return their deposit. However, pursuant to **Section 38** of the Act a landlord must act on administering the security or pet damage deposit, within 15 days of receiving the tenant's forwarding address in writing, and upon their failure to do so the landlord must pay the tenant *double* the amount of their deposit(s).

I do not have benefit of evidence the tenant provided the landlord with their forwarding address in writing other than on the date the application for dispute resolution was served. However, I find that having served the application to the landlord with the tenant's forwarding address constitutes providing it in writing.

As a result, the requirements enabling the tenant entitlement to the security deposit have not been established by the tenant.

I find that the landlord currently holds a security deposit of \$1500.00 and the **landlord is now deemed to have received the tenant's forwarding address 5 days after the date of this Decision.**

Section 38 of the Act provides that the landlord has **15 days** to either file for dispute resolution to make a claim against the security deposit **or** return the original amount of \$1500.00 to the tenant. If the landlord fails to do either of these, the tenant, on application, will be entitled to *double* the amount of the original deposit of \$1500.00 (or \$3000.00).

As a result of all the above, I find that the tenant's application for dispute resolution is premature, and I dismiss the application *with leave to reapply, if necessary*.

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch.

Conclusion

The tenant's application is dismissed with leave to reapply.

This Decision is final and binding on both parties.

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: March 07, 2017

Residential Tenancy Branch