



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0911306 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference on *. Only the Landlord/Tenant called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that they/she/e served the Landlord with the Notice of Hearing and the Application on March 27, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of April 1, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord pursuant to sections 49 and 51 of the *Residential Tenancy Act*?
2. Is the Tenant entitled to return of double the security deposit paid?

Background and Evidence

The Tenant testified that his tenancy began November 1, 2003. He confirmed he paid a \$362.50 security deposit.

At the time he received the 2 Month Notice to End Tenancy for Landlord's Use in February of 2017 he was paying \$775.00. A copy of the Notice was provided in evidence.

The Tenant stated that when he received the Notice to End Tenancy he called the Landlord and asked if he could move out early. He stated that the Landlord agreed to this as he wanted to begin construction as soon as possible and they both agreed to February 28, 2017. He confirmed that the Landlord agreed that he need not give 10 days' notice.

The Tenant confirmed that he moved out of the rental unit on February 28, 2017. He also provided his forwarding address to the Landlord on February 28, 2017. A copy of this note was provided in evidence.

Introduced in evidence was a copy of a cheque for \$1,150.33 dated March 6, 2017 purporting to be return of the deposit, interest and free months' rent. The Tenant testified that he received the cheque on March 22, 2017.

In the within hearing the Tenant sought the balance of the compensation due to him as the Landlord failed to return the funds within 15 days as required by the *Act*.

Analysis

The Tenant seeks return of double the security deposit paid as the Landlord returned the funds on March 22, 2017, rather than March 15, 2017 as required by the *Act*. The return of security deposits is dealt with in section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's undisputed evidence that they did not agree to the Landlord retaining any portion of his security deposit.

I find that the Landlords received the Tenants forwarding address in writing on February 28, 2017.

The Landlords failed to apply 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 required under section 38(1) of the *Act*.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlord pay the Tenant double the security deposit paid. The interest rate calculator confirms that the interest payable on the \$362.50 security deposit is \$12.83 such that the Landlord holds the sum of \$375.33. Section 38(6) provides that a Tenant is entitled to return of double the deposit plus interest such that the Tenant is entitled to \$750.66.

The Tenant was also entitled to the sum of \$775.00 representing a month's rent pursuant to sections 49 and 51 of the *Residential Tenancy Act*. As such the Tenant was entitled to the sum of \$1,525.66.

The Tenant confirmed that he cashed the cheque he received from the Landlord such that the Landlord has paid the Tenant the sum of \$1,150.33 leaving a balance of

\$375.33 owing. The Tenant is entitled to recovery of these sums as well as the \$100.00 filing fee for a total award of **\$475.33**.

Conclusion

The Tenant's application for return of double the security deposit plus interest is granted.

The Tenant is given a formal Monetary Order in the amount of **\$475.33**, representing the balance owing to him. He must serve the Order on the Landlord and should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: August 22, 2017

Residential Tenancy Branch