



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant requested a Monetary Order representing double the security deposit paid and to recover the filing fee.

The hearing was conducted by teleconference on November 22, 2017. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on June 15, 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 June 20, 2017 and I proceeded with the hearing in her 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 return of double the security deposit paid?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified as follows. The tenancy began February 1, 2015. Monthly rent was payable in the amount of \$850.00 per month and the Tenant paid a security deposit in the amount of \$425.00.

The Tenant testified that the Landlord did not perform a move in or move out condition inspection report in accordance with the *Residential Tenancy Act* and *Residential Tenancy Regulation*.

The tenancy ended on December 1, 2016.

The Tenant stated that the Landlord provided the Tenant with a cheque in the amount of \$70.07, making deductions to his deposit for items she claimed he removed from the rental unit. The Tenant confirmed that he did not cash this cheque as he did not wish to imply that he accepted this amount as a fair settlement.

The Tenant confirmed that the day before the hearing, on November 22, 2017, he received a cheque from the Landlord in the amount of \$880.00.

In the within action the Tenant sought the sum of \$880.03 including the \$100.00 filing fee. He confirmed that this sum took into consideration the \$70.07 he had received, but as he has not cashed this cheque, it is "stale dated" and cannot be cashed.

Analysis

After consideration of the Tenant's undisputed testimony and evidence and on a balance of probabilities I find as follows.

I accept the Tenant's evidence that the Landlord did not perform a move in or a move out condition inspection report. In failing to do so, she has extinguished her right to claim against the Tenant's deposit pursuant to sections 24, 36, and 38 of the *Residential Tenancy Act*.

I further accept the Tenant's evidence that the Landlord made deductions to his security deposit without his consent. By failing to return the Tenant's security deposit, or make an application for

dispute resolution within 15 days of receipt of the Tenant's forwarding address, the Landlord must pay the Tenant double the security deposit pursuant to sections 38(1) and 38(6) of the *Act*.

The Tenant paid a security deposit in the amount of \$425.00 such that he is entitled to the sum of \$850.00. As he has been successful in his application he is also entitled to recover the filing fee for a total award of \$950.00.

I accept the Tenant's evidence that he received a cheque for \$880.00 the day before the hearing.

I further accept the Tenant's evidence that he previously received a cheque from the Landlord for \$70.07, but that he did not cash this cheque as he did not want to give the Landlord the impression that he accepted these funds as sufficient. I find the Landlord knew, or ought to have known that cheque was not cashed as the funds would remain in her account. I therefore find the Tenant is entitled to a Monetary Order for the balance due in the amount of **\$70.00**.

Conclusion

The Tenant is granted a Monetary Order in the amount of \$70.00 representing the balance due for double his security deposit and recovery of the filing fee. The Tenant must serve this Order on the Landlord and may file and enforce it in the B.C. Provincial Court (Small Claims Division) 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: December 1, 2017

Residential Tenancy Branch