



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This decision pertains to the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"), seeking a monetary order for compensation for return of a security deposit, for cost of mail and recovery of the filing fee.

The Tenant attended the hearing before me and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Landlord did not attend.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

The Tenant testified that they initially served the Notice of Dispute Resolution Proceeding package (the "Notice") on the Landlord by having a friend put the Notice in the Landlord's mail box on March 29, 2018. The Tenant submitted a photograph of their friend putting a document in the mailbox. I advised the Tenant that leaving a copy of the Notice in a mailbox is not an acceptable method of service under section 89 (1) of the Act for serving a notice of application for dispute resolution.

The Tenant then testified that they sent a copy of the Notice to the Landlord by way of registered mail, on March 29, 2018. They provided a registered mail tracking number. The Landlord did not pick up the Notice, and it was returned.

Section 89 (1) of the Act requires a party to serve an application for dispute resolution by one of five methods. One method, section 89 (1) (c), permits a party to send a copy of the application "by registered mail to the address at which [. . .] the person carries on business as a landlord." The Tenant submitted into evidence a copy of a two-page Condition Inspection Report (the "Report") which is signed by the Landlord, and which

lists the address of the rental unit as the address for service of the Landlord.

Section 90 (a) of the Act states that a person is deemed to have received a document sent by registered mail on the fifth day after it was mailed.

Residential Tenancy Policy Guideline 12 – Service Provisions (pages 11-12) states that when a document is served by registered mail, “the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.”

Applying the law to the facts, I find that the Tenant served the Landlord with the Notice pursuant to section 89 (1) of the Act, and that the Landlord is deemed to have received the Notice on April 3, 2018.

Issues

1. Is the Tenant entitled to a return of their security deposit?
2. Is the Tenant entitled to a monetary order for compensation for the cost of the registered mail?
3. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant testified that they moved in to the rental unit on January 16, 2016, and moved out on February 18, 2018. Rent was \$1,200.00 and the Tenant paid a security deposit of \$600.00. The Tenant submitted into evidence a copy of a bank draft receipt, dated December 19, 2015, which references rent and the security deposit.

The Landlord completed the Report on February 18, 2018. The Report includes the Tenant’s forwarding address. The Landlord did not complete a condition inspection report at the start of the tenancy as required by section 23 of the Act.

Having still not received the security deposit, the Tenant mailed the Landlord their forwarding address on March 15, 2018. That letter was returned unclaimed.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38 (1) of the Act, "Return of security deposit and pet damage deposit" states:

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

- (a) the date the tenancy ends,
- (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.

Section 38 (6) states that where a landlord fails to comply with section 38 (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.

The Tenant testified, and submitted documentary evidence, that the Landlord had a copy of their forwarding address in the Report. They testified that they also sent the Landlord their forwarding address by way of registered mail on March 15, 2018. I find that the Landlord had the Tenant's forwarding address on February 18, 2018, in the Report, and that they were served pursuant to section 88 (a) of the Act. I further note that refusal or neglect to accept registered mail is not a ground for review under the Act. The Landlord has not applied for dispute resolution or returned the security deposit.

Therefore, taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find the Tenant has met the onus of proving their case that they are entitled to a monetary order for the return of the security deposit. I further find that the Landlord has not complied with section 38 (1) of the Act and, pursuant to section 38 (6) (b), must pay the Tenant double the amount of the security deposit for a total of \$1,200.00.

Section 67 of the Act permits me to order that one party pay another party compensation if damage or loss results from one party not complying with the Act, the regulations or a tenancy agreement.

The Tenant testified that the cost of sending the March 15, 2018, registered letter to the Landlord, and the cost of sending the Notice to the Landlord on March 29, 2018, also by registered mail, amounts to \$21.00 (\$10.50 x 2). While the Tenant only submitted a receipt for the March 15, 2018 letter, I accept the Tenant's evidence that it cost them a \$21.00 to mail both documents. However, any costs associated with the filing of the application are not compensable under section 67 of the Act. As such, I dismiss that aspect of the Tenant's claim.

As the Tenant is otherwise successful in their application, I grant the Tenant a monetary award of \$100.00 for the filing fee, pursuant to section 72 of the Act.

Pursuant to section 67 of the Act, I grant a monetary order in the amount of \$1,300.00.

Conclusion

I grant the Tenant a monetary order in the amount of \$1,300.00. This order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 11, 2018

Residential Tenancy Branch