



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This decision pertains to the tenant's application for dispute resolution made on May 30, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant seeks a monetary order for the return of her security.

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 the hearing.

The tenant testified that the Notice of Dispute Resolution Proceeding package was initially served on the landlord by way of Canada Post registered mail, that it was sent on May 31, 2018, and returned undeliverable. The tenant submitted into evidence a copy of the Canada Post receipt and tracking number. The tenant also testified that she served the landlord with the package by taping a copy to the landlord's door, and this was witnessed (witness "L.N.") to have occurred on July 15, 2018.

While I find that the second attempt to serve the landlord is not in compliance with section 89 (1) of the Act, I do find that the tenant's first attempt to serve the landlord is sufficient service pursuant to section 89 (1) (c) of the Act.

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

Issue

Is the tenant entitled to a monetary order for the return of her security deposit?

Background and Evidence

The tenant testified that the tenancy commenced in mid-March 2014 and ended on June 30, 2017. Monthly rent, due on the first of the month, was \$590.00. The tenant paid a security deposit in the amount of \$200.00.

The tenant submitted into evidence a copy of a receipt from the landlord for the security deposit.

The tenant provided the landlord with her forwarding address in an email dated August 2, 2017, and in a further email dated September 25, 2017. The email correspondence reflects an ongoing conversation between the tenant and the landlord, and, as pointed out by the tenant, indicates the landlord's unwillingness to return the security deposit.

A copy of the email correspondence was submitted into evidence by the tenant.

Analysis

Section 38 (1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord **must** do one of the following:

- (1) repay any security deposit or pet damage deposit to the tenant, or
- (2) apply for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act 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 provided supporting documentary evidence, that the landlord received the tenant's forwarding address in writing on August 2, 2017, and again on September 25, 2017. I find that the landlord received the tenant's forwarding address in writing on August 2, 2017, pursuant to section 38 (1) (b) of the Act, and infer that there was no written agreement between the parties whereby the landlord could retain any or all of the security deposit, as would be permitted under section 38 (4) (a) of the Act.

Further, there is no evidence before me to find that the landlord applied for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, taking into consideration the evidence and undisputed testimony presented before me, and applying the law to the facts, I find the tenant has met the onus of proving her case that she is entitled to the return of her 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) of the Act, must pay the tenant double the amount of the security deposit for a total of \$400.00.

Pursuant to section 67 of the Act, I hereby grant the tenant a monetary order in the amount of \$400.00.

Conclusion

I grant the tenant a monetary order in the amount of \$400.00. This order must be served on the landlord and may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

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 Act.

Dated: July 30, 2018

Residential Tenancy Branch