



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRO-PACIFIC HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDCT MNSD, FFT

Introduction

This hearing was convened in response to an application by the tenant for a monetary order filed March 08, 2018, and as orally amended during the hearing, for solely compensation under Section 38 of the Act for double the deposit amount. The application is inclusive of an application for recovery of the filing fee for this application.

Both parties were represented at today's hearing. The landlord acknowledged receiving the application and evidence of the tenant. The tenant claims they did not receive the evidence of the landlord which the landlord testified they sent to the tenant by registered mail. The tenant testified they moved on September 01, 2018 however did not notify the landlord, and as a result they did not receive the landlord's registered mail sent soon after September 01, 2018. I accepted that the tenant was provided evidence in accordance with the Act, and further orally described the landlord's evidence to the tenant during the hearing as did the landlord. The parties were provided opportunity to present *relevant* evidence in testimony. The parties were also provided opportunity to discuss their dispute with a view to settling all matters to limited avail. The hearing proceeded on the merits of the tenant's application as orally amended by the tenant in the hearing. Only the *relevant* aspects of this matter are described and which form the basis of this Decision.

Issue(s) to be Decided

Is the tenant entitled to double the amount of their original security deposit pursuant to the Act?

Background and Evidence

The undisputed *relevant* evidence of the parties before me is as follows.

The tenancy began February 01, 2015 and legally ended June 30, 2016. Rent was \$1450.00 payable in advance on the 1st. of every month. The parties conducted mutual condition inspections with requisite condition inspection reports (CIR) for the beginning and end of the tenancy. The parties agree the landlord received a forwarding address from the tenant on July 01, 2016 in writing as provided on the *move out* CIR.

At the outset of the tenancy the landlord collected a security deposit of \$725.00, of which the landlord returned an amount with the landlord's deductions for:

1.) professional carpet cleaning, 2.) cost of cleaning, 3.) drywall repair, 4.) 1 day's rent for overholding of the rental unit to July 01, 2016.

The tenant provided evidence by way of the move out CIR that they disagreed with the report's representation of the condition of the rental unit at the end of the tenancy and absent the tenant's agreement to the landlord's stated deductions. The tenant testified they agreed the landlord was owed the cost for professional carpet cleaning as reflected in their application and for 1 day's pro-rated rent, in the respective amounts of \$141.75 and \$48.39. None the less, the landlord sent the tenant the balance of the security deposit to the tenant on July 15, 2016 in the amount of \$384.87 by ordinary mail postmarked sent July 15, 2016. The tenant claims they received the landlord's mail on July 19, 2016.

Analysis

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

On preponderance of the relevant evidence for this matter, I find as follows.

I find that a postmark indicating something has been mailed is not evidence of it being received on the postmark date. **Section 90** of the Act, in part, states that a document given or served by mail is deemed to be *received* on the 5th day after it is mailed. I find that in this matter the landlord mailed the tenant the security deposit on July 15, 2016 and it is deemed by the Act to have been received July 20, 2016. I find it reasonable to accept the tenant's evidence they received it July 19, 2018.

Section 38(1) of the Act provides as follows,

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay or return to the tenant the security deposit, or to make an application for dispute resolution by July 16, 2016, or within 15 days of receiving the tenant's forwarding address in writing on July 01, 2016, and is therefore liable under Section **38(6)** which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The amount which is *doubled* is the original amount of the deposit which in this matter is \$725.00. As a result I find the tenant has established an entitlement claim for \$1450.00 from which I deduct the agreed amounts for carpet cleaning and 1 day's rent in the sum of \$190.14, and the amount of \$384.87 already received by the tenant for a net entitlement of \$874.99. The tenant is further entitled to recovery of their \$100.00 filing fee for a total award of \$974.99.

Conclusion

The tenant's application is granted.

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$974.99**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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: September 28, 2018

Residential Tenancy Branch

This Decision amended pursuant to Section 78(1)(c) of the Residential Tenancy Act this 19th day of October 2018, as indicated.