



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

This hearing was convened in response to an application by the tenant dated June 14, 2019. The tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the Act):

- an order for the landlord to return all or part of the security deposit or pet damage deposit.

The tenant attended the hearing. I accept the tenant's evidence that despite the landlord having been served and having received the application for dispute resolution and notice of hearing by *registered mail* via XpressPost *with signature requirement* in accordance with **Section 89** of the Act the landlord did not participate in the conference call hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issues to be Decided

Is the tenant entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?

Background and Evidence

The undisputed evidence is as follows. The tenant confirmed the tenancy began on June 1, 2018 and ended when the tenant vacated the rental unit on or about June 30, 2019. At the outset of the tenancy the landlord collected a security deposit of \$412.50 which they retain in trust. The tenant applied for an order that the landlord pay them double the amount of the security deposit, or \$825.00. They testified providing the

landlord with a forwarding address in writing on May 28, 2019 by leaving a hand-written note containing their forwarding address along with the rental unit keys on top of the rental unit kitchen countertop. The tenant provided a photo image of the written note atop the countertop into evidence. The tenant also testified they had recently had e-mail communication with the landlord which did not result in a return of the security deposit.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

Based on the evidence provided during the hearing I find as follows.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. It is receipt of the tenant's forwarding address in writing that triggers the Landlords obligation to deal with the security deposit in accordance with section 38 of the *Act*.

Further, **Section 38(6)** confirms that, if a landlord does not comply with **section 38(1)**, the landlord may not make a claim against the security deposit or pet damage deposit and must pay the tenant double the amount of the security deposit or pet damage deposit, or both.

In this matter, I find there is insufficient evidence the tenant provided their forwarding address to the Landlord in writing in accordance with **Section 88** of the *Act* – **How to give or serve documents generally**. Accordingly, I find that the tenant's application must be dismissed, with leave to reapply if the Landlord does not deal with the security deposit in accordance with **Section 38** of the *Act*, as described below.

Pursuant to **Section 71(2)(b)** of the *Act*, I find that the landlord is deemed to have received the tenant's forwarding address in writing **on the date of this Decision**. The Landlord must now deal with the security deposit in accordance with **Section 38** of the *Act*. That is, within 15 days after the date of this Decision, the landlord must either return the original security deposit of \$412.50 to the tenant or make a claim against the security deposit by filing an application for dispute resolution at the Residential Tenancy Branch. Failure to do so may result in the landlord being prevented from making a

claim against the security deposit, and the tenant being awarded double the amount of the security deposit, or \$825.00, upon the tenant's future application.

Conclusion

The tenant's application is dismissed, *with leave to reapply* for double the amount of the security deposit if the landlord does not deal with the security deposit as described above.

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 23, 2019

Residential Tenancy Branch