



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNSDB-DR, FFT

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit and to keep all or part of the security deposit.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of double the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on November 06, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in November of 2021 was sent to the Landlord, via registered mail, at the service address listed on the Application for Dispute Resolution. The Tenant cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

As the documents were properly served to the Landlord, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Landlord.

On December 14, 2021 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord ,via

registered mail, on December 14, 2021. The Tenant submitted Canada Post documentation that corroborates this testimony. In the absence of evidence to the contrary, I find that this evidence was properly served to the Landlord and it was accepted as evidence for these proceedings.

The Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Tenant affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed that he would not record any portion of these proceedings.

Preliminary Matter

The Tenant stated that he was not aware that the Landlord had filed an Application for Dispute Resolution and that the Landlord did not serve him with any documents regarding these proceedings.

On the basis of this undisputed evidence, I find that the Landlord did not serve the Tenant with a copy of the Application for Dispute Resolution. I therefore find that the Landlord failed to diligently pursue the application and I therefore dismiss the Landlord's Application for Dispute Resolution, without leave to reapply.

Issue(s) to be Decided

Should the security deposit be returned to the Tenant?

Background and Evidence

The Tenant stated that:

- the tenancy began on June 15, 2018;
- the tenancy ended on April 15, 2021;
- the Tenant paid a security deposit of \$1,000.00;
- the Tenant paid a pet damage deposit of \$1,000.00;
- a condition inspection report was not completed at the beginning of the tenancy because the Landlord did not schedule one;
- a condition inspection report was completed at the end of the tenancy;

- on May 13, 2021 he left his forwarding address, in writing, at the location in the Landlord's home where mail is typically delivered by Canada Post;
- the Landlord sent him a text message on June 08, 2021, in which the Landlord acknowledged receiving the forward address and subsequently misplacing it;
- the deposits are still being retained by the Landlord; and
- he did not give the Landlord written authority to retain the deposits.

Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the tenancy ended on April 15, 2021.

On the basis of the undisputed evidence, I find that on May 13, 2021 the Tenant left a document containing his forwarding address at the location in the Landlord's home where mail is delivered to the Landlord by Canada Post. Pursuant to section 90 of the *Act*, I find that the forwarding address is deemed received by the Landlord on May 16, 2021.

I therefore find that to comply with section 38(1) of the *Act*, the Landlord would have had to either repay the security deposit and pet damage deposit or file an Application for Dispute Resolution claiming against the deposits by May 31, 2021.

Residential Tenancy Branch records show that the Landlord filed the Application for Dispute Resolution claiming against the deposits on November 15, 2021. I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or and the Landlord did not file an Application for Dispute Resolution within 15 days of receiving the forwarding address and the tenancy ending.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit and pet damage deposits, of \$2,000.00.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion

The Tenant has established a monetary claim, in the amount of \$4,100.00, which represents double the pet damage/security deposit and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Tenant a monetary Order for \$4,100.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord filed with the Province of British Columbia Small Claims Court and enforced 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 *Act*.

Dated: June 20, 2022

Residential Tenancy Branch