



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on October 04, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in September of 2022 was sent to the Landlord, via registered mail. The Tenants submitted Canada Post documentation that corroborates this statement. The Landlord submitted evidence in response to the Application for Dispute Resolution, so I am satisfied the Landlord was aware of the proceedings.

I find that the aforementioned documents have been served to the Landlord 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 30, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The male Tenant stated that the Landlord did not serve evidence to them for these proceedings. As there is no evidence that the Tenants received the Landlord's documents, they were not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The male Tenant stated that:

- the tenancy began on October 15, 2021;
- a security deposit of \$600.00 was paid;
- this tenancy ended on August 30, 2022;
- the Tenants provided a forwarding address, in writing, August 30, 2022;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- they do not believe the Landlord filed an Application for Dispute Resolution claiming against the security deposit.

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 Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

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 double the

security deposit to the Tenants.

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

Conclusion:

The Tenants have established a monetary claim of \$1,300.00, which includes double the security deposit of \$600.00 and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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 *Residential Tenancy Act*.

Dated: January 11, 2023

Residential Tenancy Branch