



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSDS-DR**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- An order returning the security deposit pursuant to section 38 of the Act

While the applicant tenant attended the hearing by way of conference call, the respondent landlords did not. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant testified that he served the landlords with the dispute notice and evidence package by registered mail on November 30, 2022. He provided photos of both packages, a registered mail receipt and a proof of service form in evidence. Upon questioning he advised that the landlords had lived in the upstairs suite from the rental unit and that is the only address for service he had for them. I find that the pursuant to

sections 88, 89, and 90 of the Act that the landlords are deemed to have been served with the tenant's materials on December 5, 2022.

Issue(s) to be Decided

1. Is the tenant entitled to an order for return of the security deposit?

Background and Evidence

The tenancy commenced August 20, 2018. There is no written tenancy agreement. Rent was \$800.00 per month due on the first of the month. The tenant paid a security deposit of \$400.00 which is still held by the landlord. The tenant vacated the rental unit on August 31, 2022.

The tenant stated that he did not receive a move in condition inspection report from the landlord. He did not participate in a move out condition inspection or receive a report regarding the condition of the rental unit at the time he vacated. He provided a forwarding address to the landlords by registered mail on October 13, 2022 and did not receive a response. The RTB-47 form for change of address was provided in evidence.

Analysis

Section 38(1) of the Act states that the landlord must, within 15 days of receiving the tenant's forwarding address, either return the security deposit or file a dispute application. I have no evidence before me that the landlord filed an application for dispute resolution. I find that the landlord has not returned the security deposit to the tenant within the required time frame.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1) of the Act the landlord cannot claim against the deposit and must pay the tenant double the deposit.

I find that the landlord has not complied with section 38(1) of the Act. Therefore, the tenant's application for return of the security deposit is granted. The tenant is entitled to the return of double the damage deposit in the amount of \$800.00.

Conclusion

The tenant is granted a monetary order for \$800.00 in recovery of the security deposit. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 16, 2023

Residential Tenancy Branch