



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD-DR, FFT

Introduction:

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

The Tenant stated that on September 29, 2022 he personally served the Landlord with the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on September 29, 2022. On the basis of this testimony and in the absence of any evidence to the contrary, I find that the hearing documents were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The family friend who attended the hearing on behalf of the Landlord stated that he does not have authority to represent the Landlord at these proceedings. He stated that the Landlord passed away on March 27, 2023 and that he does not believe she left a will or named an executor. On the basis of this testimony and in the absence of any evidence to the contrary, I find that the Landlord has passed away.

As the Landlord was properly served with the aforementioned documents, the hearing proceeded in the absence of the Landlord and/or her legal representative, and the evidence was accepted as evidence for these proceedings.

On May 09, 2023 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was posted to the Landlord's door on May 09, 2023. As this evidence was posted after the Landlord passed away, I cannot conclude

it was posted at her place of residence. I therefore cannot conclude that it was properly served to the Landlord and I cannot accept it 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:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Tenant stated that:

- the tenant=cy began on September 01, 2021;
- a security deposit of \$325.00 was paid on August 11, 2021;
- this tenancy ended on May 31, 2022;
- the Tenant provided a forwarding address, in writing, on June 16, 2022 by personally handing it to the Landlord;
- the Tenant 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
- the Landlord did not file 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 the Tenant double the security deposit.

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 of \$750.00, which includes double the security deposit of \$325.00 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's estate does not voluntarily comply with this Order, it may be served on a legal representative for 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 *Residential Tenancy Act*.

Dated: May 31, 2023

Residential Tenancy Branch