



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD-DR, FFT

Introduction

This hearing was initiated by way of a Direct Request Proceeding but was adjourned to this participatory hearing by the Adjudicator who initially considered the Application for Dispute Resolution.

This participatory hearing was convened to consider the Tenant's application for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenant stated that on January 13, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on January 12, 2023 were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenants submitted Canada Post documentation that corroborates this statement.

The Agent for the Landlord stated that the Landlord, who is her brother, resides at the service address used by the Tenant. She stated that she does not know if the Landlord received the documents that were mailed to him on January 13, 2023.

On the basis of the undisputed evidence that documents were mailed to the Landlord's home address on January 13, 2023 and in the absence of any evidence to established they were not received, I find that these documents were served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*. These documents are deemed received by the Landlord on January 18, 2023, pursuant to section 90 of the

Act. As the documents were properly served to the Landlord, the evidence was accepted as evidence for these proceedings.

The Agent for the Tenant stated that on April 13, 2023 notice of the reconvened hearing was personally delivered to a male at the Landlord's residence, whom the Agent for the Tenant could only identify by a first name. She stated that the male told her he lived at that address.

The Agent for the Landlord stated that there is a suite in the lower portion of the Landlord's residence. She stated that she does not know the name of the person renting the lower portion. She stated that the individual named by the Landlord does not live with the Landlord.

On the basis of the testimony of the Agent for the Tenant, I find that the notice of reconvened hearing was served to a male who lives in the residential complex. On the basis of the testimony of the Agent for the Landlord, I find that this male does not live with the Landlord, although I find it entirely possible that he lives in another unit within the residential complex.

As I have concluded that the male who was served with the notice of reconvened hearing does not reside with the Landlord, I find that the Landlord was not served with this notice in accordance with section 88 or 89 of the *Act*.

The Agent for the Landlord stated that the Landlord provided her with notice of this reconvened hearing sometime between April 15, 2023 and April 19, 2023. She stated that this document was mailed to the Landlord and that the mailbox is attached to the exterior of the residential complex. She stated that the Landlord provided her with the notice of hearing and he asked her to attend the hearing on his behalf for the purposes of requesting an adjournment, as he left for India on April 24, 2023.

On the basis of the testimony of the Agent for the Landlord, I find that it is obvious that the Landlord received the notice of this reconvened hearing. I find it entirely possible that the person who received the notice of reconvened hearing from the Agent for the Tenant left it in the Landlord's mailbox. Regardless of how the Landlord received it, it is clear he received it because he provided it to the Agent for the Landlord. As the Landlord received the notice of reconvened hearing, I find it was sufficiently served to the Landlord, pursuant to section 71(2)(c) of the *Act*.

As the notice of reconvened hearing was sufficiently served to the Landlord, I am able to proceed with this hearing.

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.

Preliminary Matter

At the outset of the hearing the Agent for the Landlord requested an adjournment, as she was asked to do by the Landlord. She stated that the Landlord is in India and is, therefore, unable to participate in the proceedings. When she was asked why the Landlord could not participate in the teleconference from India, she stated that it is the middle of the night in India.

These proceedings were conducted by way of a teleconference. Participants can dial into the teleconference from most places in the world, including India. I find the time difference between India and Canada is not a reasonable reason for not participating in the teleconference. The Landlord could have participated in these proceedings by dialing into the teleconference, although I recognize it would have been at an inconvenient time. I therefore deny the request for an adjournment on the basis of the Landlord being out of the country.

In support of the request for an adjournment the Agent for the Landlord stated that the Landlord requires an Interpreter.

The Residential Tenancy Branch will arrange to have an interpreter participate in a teleconference proceeding if a party requests that service prior to the hearing. Had the Landlord made that request, the Landlord would have had the assistance of an interpreter at the hearing. As the Landlord did not attend the hearing, there was no need for an interpreter. As there was no need for an interpreter, there is no need to adjourn the hearing for that purpose.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Agent for the Tenant stated that:

- The Tenant moved into the rental unit on September 01, 2019;
- The rental unit was purchased by this Landlord in April of 2022;
- The rental unit was vacated on May 30, 2022;
- A security deposit of \$775.00 was paid to the original landlord on July 13, 2019;
- The original landlord did not schedule a time to complete a condition inspection report at the start of the tenancy;
- A forwarding address was posted on the door of the Landlord's rental unit on November 24, 2022;
- 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
- She does not think the Landlord filed an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Landlord stated that:

- The Tenant was living in the rental unit prior to the Landlord moving into the rental unit;
- The Landlord purchased the rental unit in April of 2022;
- The rental unit was vacated at the end of May in 2022;
- She does not know how much of a security deposit was paid;
- She does not know if the original landlord scheduled a time to complete a condition inspection report at the start of the tenancy;
- She does not know if a forwarding address was provided to the Landlord;
- The Tenant did not authorize the Landlord to retain any portion of the security deposit;
- She does not know if the Landlord did not return any portion of the security deposit;
- She does not think the Landlord filed an Application for Dispute Resolution claiming against the security deposit; and
- The Tenant stole property from the Landlord.

Analysis:

On the basis of the testimony of the Agent for the Tenant and the tenancy agreement submitted in evidence, I find that the Tenant paid a security deposit of \$775.00 to her original landlord on July 13, 2019. On the basis of the testimony of the Agent for the Tenant and in the absence of evidence to the contrary, I find that this deposit has not been returned to the Tenant.

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, plus interest, or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that this tenancy ended by the end of May of 2022.

On the basis of the testimony of the Agent for the Tenant and in the absence of evidence to the contrary, I find that the Tenant provided the Landlord with a forwarding address on November 22, 2022 when it was posted on the door of the Landlord's residence.

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

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, which is \$1,550.00 plus interest on the original deposit of \$5.09.

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.

As the Agent for the Landlord was advised at the hearing, in the event the Landlord

believes the Tenant owes the Landlord money for any reason related to the tenancy, the Landlord has the right to file an Application for Dispute Resolution claiming compensation.

Conclusion:

The Tenant has established a monetary claim of \$1,655.09, which includes double the security deposit, interest of \$5.09, 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 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 *Act*.

Dated: May 03, 2023

Residential Tenancy Branch