

DECISION

Dispute Codes:

MNDC; MNSD

Introduction

This is the Tenant's application a monetary order for double the security deposit paid to the Landlord.

I reviewed the evidence provided prior to the Hearing. The Tenant gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit?

Background and Evidence

The Tenant gave the following testimony:

- The Tenant mailed the Landlord the Notice of Hearing package, via registered mail, on May 27, 2009.
- The Landlord phoned the Tenant on May 29, 2009, after receiving the Notice of Hearing package, and asked the Tenant to drop the claim. The Landlord said that the security deposit refund was mailed to her already.
- The Tenant paid her share of the security deposit in the amount of \$243.75, on October 24, 2008, which was half of the security deposit required. Another tenant paid the other half.
- The Tenant gave the Landlord written notification of her forwarding address on April 30, 2009, by delivering the notification to the Landlord's mail box. The Tenant followed this up with a phone call to the Landlord on May 1, 2009, to confirm that the Landlord received her forwarding address.
- On June 24, 2009, the Tenant received a cheque in the amount of \$223.75 (her half of the security deposit refund less \$20.00 for loss of a key). The Tenant has not cashed the cheque.

Analysis

I accept the Tenant's testimony that she mailed the Notice of Hearing documents to the Landlord, via registered mail, on May 27, 2009. Section 90 of the Act deems service in this manner to be effected 5 days after mailing the documents. Despite being served with the documents, the Landlord did not sign into the teleconference and the Hearing proceeded in his absence.

I accept the Tenant's testimony and documentary evidence that she provided the Landlord with written notification of her forwarding address on April 30, 2009, in accordance with Section 88(f) of the Act. Pursuant to Section 90 of the Act, service in this manner is deemed to be effected on the 3rd day after leaving the document in the Landlord's mailbox. Therefore, the Landlord is deemed to have received the document on May 3, 2009.

Section 38(1) of the Act provides that after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. Repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord was deemed to have received the Tenant's forwarding address in writing on May 3, 2009. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of 487.50, plus accrued interest on the original deposit in the amount of \$.69.

The Tenant has not cashed the Landlord's cheque in the amount of \$223.75, and I order that the Tenant return the cheque to the Landlord forthwith.

Conclusion

I hereby grant the Tenant a Monetary Order against the Landlord in the amount of \$488.19. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

I order that the Tenant return the Landlord's cheque in the amount of \$223.75 to the Landlord forthwith.

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: September 8, 2009.
