



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This was the hearing of the tenant's application for the return of his security deposit, including double the amount of the deposit. The hearing was conducted by conference call. The tenant attended with his advocate. The landlord did not call in and did not participate in the hearing.

Preliminary issue – service of application

Section 89 of the *Residential Tenancy Act* provides that an application seeking a monetary order must be served upon a landlord by leaving a copy with the person, by leaving a copy with an agent of the landlord, or by sending a copy by registered mail to the landlord's address. The tenant filed this application on November 9, 2012. He testified that on November 13, 2012 he attended at the address of the rental unit where the landlord resides. The landlord was home; the tenant saw her through the window, but despite his repeated knocking and his advice to her that he had documents to serve, she refused to open the door. The tenant told her that he would leave the documents in her mail box. The tenant testified that on the following day, which was November 14, 2012, he received an envelope sent to the forwarding address previously given to the landlord. The envelope was from the landlord and it contained a money order in the amount of \$225.00, being the amount of the tenant's original security deposit paid to the landlord.

Section 71 (2) (c) of the *Residential Tenancy Act* provides that the director may order that a document not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of the *Act*. The landlord refused to accept personal service of the application and Notice of Hearing, but her conduct in paying the amount of the original deposit to the tenant on the day following delivery of his application satisfies me that she actually received the application and pursuant to section 71 (2) (c), I find that the landlord has been sufficiently served with the application for dispute resolution and Notice of Hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order in the amount of double his security deposit?

Background and Evidence

The rental unit is a basement suite in a house in Burnaby. The tenant responded to an advertisement and agreed to sublet a room in the basement from the landlord for \$50.00 per month commencing August 1, 2012. The tenant paid the landlord a \$225.00 security deposit on August 1, 2012.

The tenant testified that the landlord gave him a two month Notice to End Tenancy for landlord's use and he move out on October 23, 2012. On the day he moved out he gave the landlord a self addressed mailing envelope with his forwarding address written on it. The forwarding address was a mailing address, but not the address of his new accommodation. When the tenant gave the landlord the envelope he told her that she had 15 days to return his security deposit by mailing it to him.

The tenant filed his application for dispute resolution on November 9, 2012. He delivered it to the landlord when he attempted to serve her at the rental unit on November 13, 2012. On November 14, 2012 the tenant received a money order in the amount of \$225.00 that was sent to the forwarding address he provided to the landlord on October 23, 2012.

Analysis and Conclusion

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with his forwarding address in writing on October 23, 2012 when he gave the landlord a self-addressed envelope and requested that she mail the deposit to him. The deposit was not returned until November 14, 2012, which was outside the allowed period of 15 days.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. The tenant has received the original deposit amount but he is entitled to the doubled amount; I therefore grant the tenant's application and award him the sum of \$225.00.

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 08, 2013

Residential Tenancy Branch

