



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 29, 2013, by the Tenant to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; the return of double their security deposit; and to recover the cost of the filing fee from the Landlord for this application.

The Tenant submitted documentary evidence which indicates the Landlord was served with copies of the application for dispute resolution, Notice of dispute resolution hearing, and evidence, on August 1, 2013, by registered mail. Canada Post receipts were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord is deemed served notice of this proceeding on August 6, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Landlord's absence.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenant provided affirmed testimony that he entered into a tenancy agreement that began on January 1, 2012. Rent was initially payable in the amount of \$500.00 and was increased to \$519.00 per month effective on the first of May 2013. On or before January 1, 2012, the Tenant paid \$250.00 as the security deposit. No condition inspection report forms were completed at move-in or move-out.

The Tenant provided evidence that on April 30, 2013, he issued his notice to end tenancy effective May 31, 2013. He provided his forwarding address in writing on July

3, 2013, by registered mail, as supported by the Canada Post receipts he provided in evidence. He is requesting an order for the return of double his deposit.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and corroborated by their documentary evidence.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports the tenancy ended May 31, 2013, and that the Tenant provided the Landlord with his forwarding address in writing on July 3, 2013. This forwarding address is deemed to have been received on July 8, 2013, five days after it was mailed, pursuant to section 90 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than July 23, 2013. They did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish his claim and I award him double his security deposit plus interest in the amount of **\$500.00** (2 x \$250.00 + \$0.00 interest).

The Tenant has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's application will be accompanied by a Monetary Order in the amount of **\$550.00** (\$500.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not 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 *Residential Tenancy Act*.

Dated: November 04, 2013

Residential Tenancy Branch

