



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF; O

Introduction

This is the Tenant's application for return of the security deposit; to recover the cost of the filing fee from the Landlords; and for "other" orders.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he served the Landlords with the Notice of Hearing documents and copies of his documentary evidence by registered mail, sent on May 29, 2014. The Tenant stated that the documents were returned to him, unclaimed. The Tenant provided photocopies of the registered mail envelope in evidence, which included the details of attempted deliveries.

Based on the Tenant's affirmed testimony and the documentary evidence provided, I find that the Landlords were served with the Notice of Hearing documents pursuant to the provisions of Section 89 of the Act. Service in this manner is deemed to be effected 5 days after mailing the documents. In spite of being duly served with the documents, the Landlords did not sign into the teleconference, which remained open for 30 minutes, and the matter proceeded in their absence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Tenant entitled to recover the cost of registered mail?

Background and Evidence

This tenancy started on or about June 15, 2014. The Tenant testified that the Landlords did not prepare a tenancy agreement in writing and that the Landlords did not prepare any documents in writing over the term of the tenancy, except for receipts for rent paid in cash. He testified that he paid a security deposit in the amount of \$387.50 and a pet

damage deposit in the amount of \$200.00. The Tenant testified that the pet damage deposit was returned to him in November or December, 2013. The Tenant stated that the parties did a “walk through” at the end of the tenancy, “about a week” before he provided the Landlords with his forwarding address in writing on December 3, 2014.

The Tenant testified that he did not give the Landlords permission to retain any of his security deposit.

Analysis

A security deposit is held in a form of trust by the Landlords for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) at the end of the tenancy and 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.

Based on the undisputed affirmed testimony of the Tenant, I find that the Landlords did not return the security deposit to the Tenant within 15 days of receipt of his forwarding address in writing. The Landlords have not filed an Application for Dispute Resolution claiming against the security deposit. In any event, based on the affirmed testimony of the Tenant, I find that the Landlords did not comply with the provisions of Act with respect to the requirement for Condition Inspection Reports; and therefore the Landlords have extinguished their right to claim 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, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit in the amount of **\$775.00**.

There is no provision in the Act for recovery of the cost of serving documents and therefore this portion of the Tenant’s application is dismissed.

The Tenant has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Landlords retain the right to file an application for damages under Section 67 of the Act, if they so desire.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$825.00** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 20, 2014

Residential Tenancy Branch

