



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit.

The Advocate for the Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, although the Tenant does not know the date of service. The Landlord acknowledged receiving these documents in the mail and I therefore find that they were served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On April 19, 2016 the Landlord submitted 3 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenant on April 04, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On April 19, 2016 the Landlord submitted an unopened envelope to the Residential Tenancy Branch, which was addressed to the Tenant and marked by Canada Post as "Return to Sender". The Landlord stated that this envelope was mailed to the Tenant as evidence on April 04, 2016. The Advocate for the Tenant stated that the Tenant did not receive a copy of this envelope.

With the consent of both parties I opened the envelope during the hearing and advised the parties that it contained:

- 5 photographs;
- a copy of the letter dated November 10, 2015; and
- a cheque in the amount of \$175.00.

The Advocate for the Tenant stated that the 5 photographs and a copy of the letter dated November 10, 2015 were served to the Tenant as evidence for these proceedings and they were accepted as evidence for these proceedings.

The Landlord acknowledged that she did not serve the Tenant with a copy of the cheque as evidence for these proceedings. As the cheque was not provided to the Tenant as evidence, I will not be considering that document during this adjudication.

As the Tenant does not acknowledge receiving a copy of the unopened envelope, that item will not be considered during this adjudication. Although the Landlord contends the envelope was served to the Tenant I am satisfied that I can fairly adjudicate this matter without considering the envelope.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

The Landlord stated that the Tenant has reversed her first and surname on the Application for Dispute Resolution. The Tenant was given three opportunities to amend the Application for Dispute Resolution to reflect the name of the Landlord as she provided it during the hearing and he declined each opportunity.

Although the Tenant has not amended the Application for Dispute Resolution, I am satisfied that the party named in the Application is the party who participated in these proceedings and the decision reflects both names provided to me.

Preliminary Matter #2

These proceedings relate solely to whether or not the Landlord has complied with the legislation in regards to the security deposit. As the Landlord has not filed an Application for Dispute Resolution seeking compensation for damage to the rental unit, neither party was permitted to give evidence of the condition of the rental unit at the end of the tenancy.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began on March 01, 2015;
- a security deposit of \$375.00 was paid;

- the tenancy ended October 15, 2015;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Advocate for the Tenant stated that he gave his forwarding address, in writing, to the building manager on October 15, 2015. The Landlord stated that she received the forwarding address from the building manager a few days after October 15, 2015.

The Landlord stated that on November 10, 2015 she sent the Tenant a cheque, in the amount of \$175.00, which represented a partial refund of the security deposit. The Landlord stated that this cheque that was returned to her by Canada Post in an envelope marked "Return to Sender".

Analysis:

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

On the basis of the undisputed evidence I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not attempted to repay the full security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

On the basis of the undisputed evidence I find that the Landlord mailed a \$175.00 cheque to the Tenant, which represented a partial security deposit refund, which was returned to the Landlord. Even if the Tenant had received this cheque I would still conclude that the Landlord did not comply with section 38(1) of the *Act*, as this was not a full refund.

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.

Conclusion:

The Tenant has established a monetary claim of \$750.00, which is double the security deposit, 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 served on the Landlord, 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: July 06, 2016

Residential Tenancy Branch