



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for return of double the security deposit and pet deposit and recovery of the filing fee. The landlord did not appear at the hearing. The tenants provided documentary evidence that the tenants sent the hearing package to the landlord via registered mail on March 31, 2009. The registered mail was returned to the tenants on April 2, 2009. The tenants testified that handwriting similar to that of the landlord's was on the outside of the registered mail envelope and indicated that the landlord was "not at this address". On April 3 or 4, 2009, the male tenant went to the landlord's address where the tenant saw the landlord in the window of the residence and put her head outside the window to say "hello"; however, the landlord retreated inside the residence once the landlord saw it was the tenant at the door. In the weeks that followed the visit to the landlord's address the tenants noticed the landlord's house was sold and the tenants believe the landlord is no longer living at that address.

Issues(s) to be Decided

1. Service of the hearing package upon the landlord.
2. Whether the tenants are entitled to return of double the pet deposit and security deposit.
3. Award of the filing fee.

Background and Evidence

Upon hearing the tenants' testimony and upon review of the tenancy agreement, I make the following findings. The tenancy commenced February 15, 2009. The tenants paid a \$475.00 security deposit and a \$150.00 pet deposit on February 15 or 16, 2009. The

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tenants participated in a move-out inspection with the landlord on March 7, 2009 and did not authorize the landlord to retain the security deposit or pet deposit. The landlord did not return the security deposit or pet deposit to the tenants despite the landlord's assurance that the deposits would be returned to them.

The male tenant testified that he provided a forwarding address in writing to the landlord, in the presence of his parents, when the tenants moved out. The female tenant submitted that the forwarding address was written on the move-out inspection report.

The tenants provided a letter written by the male tenant's mother in which she attested to witnessing the male tenant verbally give the landlord a forwarding address on March 7, 2009 and the landlord wrote the address down.

The tenants provided a copy of the inspection report as evidence for the hearing. The move-out inspection date is identified as March 7, 2009. The landlord signed the report in the space provided for the landlord's signature on the date of the move-out inspection; however, the report is not complete in that it does not identify the condition of the rental unit at the time move-out, the tenant's signature is not present in the space provided on the form at the time of move-out, nor does the tenant's forwarding address appear on the report.

Analysis

Section 89(1) of the Act provides for the ways a party must serve another party with an Application for Dispute Resolution where a monetary award is being claimed. Where a tenant serves a landlord using registered mail, the tenant must serve the landlord at an address at which the person carries on business as a landlord. An address at which a landlord carries on business may be indicated by the address on the tenancy

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agreement or the landlord's residence if the landlord does not carry on business as a landlord elsewhere. It is up to the tenant to verify the landlord's address is current at the time of mailing. In this case, the address used to serve the landlord is the same as the address that appears on the tenancy agreement and I am satisfied that it was the address that the landlord carried on business as a landlord. Upon hearing the tenant testify that he personally observed and heard the landlord at the landlord's address after the registered mail was returned, I am satisfied that the landlord was still residing at the address at the time of mailing the registered mail and the landlord was duly served. Therefore, I find the landlord was served with the Tenant's Application for Dispute Resolution and notice of hearing in accordance with the requirements of the Act and I proceed to determine the merits of the tenants' application.

Section 38(1) requires the landlord to either return the security deposit or pet deposit to the tenant or make an application for dispute resolution claiming against the security deposit or pet deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If a landlord does not comply with section 38(1) then the landlord is required to pay the tenant double the security deposit or pet deposit in accordance with section 38(6) of the Act.

Where a landlord writes a forwarding address on a move-out inspection report I find that to be sufficient notification of a tenant's forwarding address in writing. In this case, I have the submissions of the two tenants and a witness that the landlord wrote the tenant's forwarding address down on the date of the move-out inspection. Although the inspection report provided as evidence does not show a forwarding address for the tenants, I do not find that in itself to be sufficient to find the submissions of the tenants and the witness as less than credible since the inspection report has numerous other omissions at the time of move-out inspection. Therefore, based on the balance of



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probabilities, and in the absence of evidence to the contrary, I find that the landlord was provided the tenant's forwarding address in writing on March 7, 2009.

Since the landlord has failed to return the security deposit and pet deposit to the tenants, or make an application to retain it, and more than 15 days has passed since the landlord was provided a forwarding address in writing, I award the tenants a monetary award for double the security deposit and pet deposit plus recovery of the filing fee for a total Monetary Order of \$1,300.00.

The tenants must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants are awarded return of double the security deposit and pet deposit and recovery of the filing fee. The tenants are provided a Monetary Order in the amount of \$1,300.00 to serve upon the landlord.

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: May 20, 2009.

Dispute Resolution Officer