



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Are the tenants entitled to the return of double their security deposit?

Background and Evidence

The undisputed facts before me are as follows. A security deposit of \$840.00 was collected on December 6, 2006. The tenants had completely vacated the rental unit on March 30, 2009. On March 2 the landlord received the tenants' forwarding address via an email.

The landlord testified that the tenants had acknowledged having caused damage to the rental unit and having lost fobs for the unit.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. The first issue I must address is whether the email containing the tenants' forwarding address meets the requirements of the Act. While the Act does not specifically provide for service via email, in this case it is clear that the email was received by the landlord and there was no question that he knew that it was from the tenants. I am confident that legislators who determined that tenants must give landlords their forwarding address in writing were not so much concerned with compelling tenants to put pen to paper as they were with ensuring that

scribing the address was the responsibility of the tenants rather than the landlords. I see no appreciable difference between serving an address via email than serving it via facsimile. I am persuaded that service via email complied with the spirit of the Act and I find that the tenants provided their forwarding address in writing on March 2.

The landlord suggested that the tenants' acknowledgment of damage and lost fobs amounted to an agreement that the landlord could retain the security deposit. I disagree. Section 38(4) of the Act requires that the landlord obtain a written agreement that the landlord may retain the deposit. I find that the tenants' acknowledgement of having caused damage or lost fobs is insufficient to meet the requirements of this section.

I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address and the end of the tenancy I find that the landlord is therefore liable under section 38(6) which provides that the landlord must pay the tenants double the amount of the security deposit.

The landlord currently holds a security deposit of \$840.00 and is obligated under section 38 to return this amount together with the \$25.70 in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit.

Conclusion

I grant the tenants an order under section 67 for \$1,755.70, which sum includes the double security deposit, interest and the \$50.00 filing fee paid to bring this application. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated August 06, 2009.