



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for the return of double the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on July 28, 2009. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave his testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Did the tenant give his forwarding address to the landlord in writing?
- Is the tenant entitled to receive double the security deposit back?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on March 01, 2008. This was a fixed term tenancy which was due to end on February 28, 2009. The tenant paid rent of \$1,050.00 each month and a security deposit of \$525.00 was paid on March 07, 2009.

The tenant states that he was given permission from the landlord to assign the lease to a third party and has provided a confirmation letter from the landlord signed by all three parties detailing that the new tenant will assume the balance of the tenants lease for the suite. The tenant moved from the suite at the end of September, 2008 and the new tenant moved in on October 01, 2008 paid a security deposit and rent for the suite.

The tenant has provided evidence that he has given the landlord his forwarding address in writing on three separate occasions, twice by e-mail on April 16, 2009, and May 06, 2009 and by registered mail on June 12, 2009. The tenant testifies that the landlord did not return his security deposit and after a telephone call to the landlord requesting the deposit be returned the tenant states he was told that it would not be returned as the landlords had incurred costs due to the assignment of the lease.

Analysis

The landlord did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I find that the landlord did receive the tenants forwarding address in writing. The *Residential Tenancy Act* s.38 states;

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

Residential Tenancy Branch
Ministry of Housing and Social Development

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find in favour of the tenants claim for the return of double the security deposit. The landlord did received the tenants forwarding address and has not returned the security deposit nor filed an application to retain the deposit. Therefore, as stated in s.38 of the *Act* the tenant is entitled to receive double the original amount back. As the tenant has been successful with his claim he is also entitled to recover the cost of filing this application. A monetary Order has been issued for the following amount:

Double the security deposit	\$1,050.00
Accrued interest on original amount	\$6.43
Filing fee	\$50.00
Total amount due to the tenant	\$1,106.43



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,106.43**. The order must be served on the landlord and is enforceable through the Provincial Court 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 17, 2009.

Dispute Resolution Officer