



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 tenant's application for a Monetary Order for return of double the security deposit and recovery of the filing fee paid for this application. The landlords did not appear at the hearing. The tenant provided registered mail receipts as evidence that each landlord was served with notice of this hearing. I was satisfied the landlords were sufficiently served and I proceeded to hear from the tenant without the landlords present.

Issues(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

I heard undisputed testimony as follows. The tenancy commenced in September 2005 and ended February 28, 2010 when the tenant vacated. The tenant had paid a \$300.00 security deposit in 2005. There is no written tenancy agreement. The parties participated in a move-in and move-out inspection together but no inspection reports were provided to the tenant. When the tenant was moving out the tenant provided the landlord with a forwarding address on a piece of paper. The tenant provided the landlord with a forwarding address a second time via registered mail. The tenant subsequently received a refund of one-half of the security deposit. The tenant did not authorize the landlords to retain any portion of the security deposit in writing.

Upon my request, the tenant provided a copy of the tenant's forwarding address provided to the landlord and a copy of the letter he received from the landlords. The tenant supplied the evidence which shows that on April 6, 2010 the tenant wrote a letter to the landlords requesting return of the security deposit and provided a forwarding address. The letter of April 6, 2010 refers to the tenant giving the landlords a telephone number and that the tenant may have forgot to provide a forwarding address at the time of move-out. The evidence also shows that on April 13, 2010 the landlords wrote a cheque for one-half of the security deposit and provided a letter explaining that they were withholding one-half of the security deposit for receiving late notice and the condition of the rental unit. The letter also mentions that the landlords were expecting the tenant to return to the unit as he said he would.

Analysis

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions from a security deposit. In this case I was not provided evidence that the tenant gave written consent for any deductions from the security deposit or otherwise extinguished his entitlement to return of the security deposit. Accordingly, the landlords were required to comply with section 38(1) of the Act by either returning the security deposit and interest to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

Upon review of the tenant's letter of April 6, 2010 I am not satisfied the tenant provided a forwarding address in writing at the time of move out. However, I am satisfied that the tenant provided a forwarding address in writing by way of the April 6, 2010 letter that was mailed to the landlord. In accordance with section 90 of the Act, the letter is deemed to be received by the landlords five days later on April 11, 2010. The landlords had until April 26, 2010 to either refund the security deposit to the tenant or make an Application for Dispute Resolution to request retention of all or part of the security deposit in order to avoid doubling of the security deposit.

Since the landlords refunded \$150.00 of the security deposit by way of the cheque dated April 13, 2010 I find that the amount of the security deposit remaining in the hands of the landlords to be \$150.00 more than 15 days after receiving the tenant's forwarding address. Accordingly, I find that the landlords failed to comply with the requirements of the Act with respect to the \$150.00 not returned to the tenant.

Therefore, I find the tenant entitled to double the \$150.00 not returned to the tenant and interest on the original deposit. I award the tenant \$300.00 under section 38(6) of the Act and \$10.64 for accrued interest.

The tenant is further awarded the \$50.00 filing fee paid for making this application. The tenant is provided a Monetary Order in the total amount of \$360.064 to serve upon the landlords. The tenant must serve the enclosed Monetary Order upon the landlords and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$360.64 to serve upon the landlords.

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: August 17, 2010.

Dispute Resolution Officer