



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 recovery of the filing fee paid for this application. The tenants were represented by an agent. The landlords did not appear at the hearing. The agent testified that the male landlord was personally served with the hearing documents at the Broadway Skytrain station within three days of making this application. The agent testified that the female landlord was served with the hearing documents via registered mail sent on June 23, 2010 and that at that time the female landlord lived at that address. As evidence of service, the tenants provided the registered mail receipt. Having been satisfied the landlords were sufficiently served in accordance with the requirements of the Act, I proceeded to hear from the agent with respect to this matter.

Issues(s) to be Decided

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

Background and Evidence

I was provided the following undisputed evidence. There was no written tenancy agreement. The tenants paid a \$360.00 security deposit. A move-in or move-out inspection reports were prepared by the landlords. The tenancy ended April 30, 2010. The landlord returned \$180.00 of the security deposit in May 2010. The tenants did not authorize the landlord to retain any portion of the security deposit in writing. The tenants provided a forwarding address in writing via registered mail sent May 31, 2010

and the registered mail was delivered June 1, 2010. On June 18, 2010 the tenants filed this application.

As evidence the tenants provided a copy of the May 31, 2010 letter sent to the landlord along with the registered mail receipt and a print-out showing the mail was successfully delivered June 1, 2010. The tenants provided a copy of the email sent to the tenants by the landlord on May 30, 2010 outlining the landlord's reasons for withholding one-half of the deposit.

Analysis

Section 38 of the Act provides for the return of security deposits. Section 38(1) requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution claiming against the security 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. Should a landlord fail to comply with the requirements of section 38(1) the landlord must pay the tenant double the security deposit pursuant to section 38(6) of the Act.

The Act does permit a landlord to obtain a tenant's written consent or authorization from a Dispute Resolution Officer (DRO) for deductions from the security deposit for amounts owed to the landlord. However, in this case, the landlords did not have an order from a DRO or the tenants' written authorization to retain any portion of the security deposit. Nor do I find any evidence that the tenants otherwise extinguished their right to return of the security deposit.

Based upon the evidence before me, I accept that the tenants provided their forwarding address via registered mail sent on May 31, 2010 and the landlords failed to return all of the security deposit or file an Application for Dispute Resolution within 15 days of receiving the forward address. Therefore, I find the landlords did not comply with

section 38(1) of the Act and the landlord must now pay the tenants double the security deposit pursuant to section 38(6) of the Act.

I also award the filing fee to the tenants. The tenants are provided a Monetary Order calculated as follows:

Double security deposit (\$360.00 x 2)	\$ 720.00
Less: partial refund	(180.00)
Plus: filing fee	<u>50.00</u>
Total Monetary Order	\$ 590.00

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

Conclusion

The tenants were successful in this application and have been provided a Monetary Order in the amount of \$590.00 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: November 04, 2010.

Dispute Resolution Officer