



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenant for a monetary order for the return of his security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant's daughter attended the hearing on behalf of the tenant. The landlord did not attend the hearing although he was served with the application for dispute resolution and Notice of Hearing sent to him by registered mail on September 22, 2010.

Issue(s) to be Decided

Are the applicants entitled to the return of a security deposit including double the amount?

Background and Evidence

The rental unit is a suite in an apartment building in Agassiz. The tenancy began in October, 1986. The original tenants were the mother and father of the applicant, F.A.M. Monthly rent was \$480.00 payable on first day of each month. The tenants paid a security deposit at the commencement of the tenancy. F.A.M.'s mother died during the tenancy and it continued with her father as the sole tenant.

In February, 2009 there was a fire at the rental property. The rental unit was damaged and the tenant had to move to other accommodation. The tenant's daughter testified that she was present at the time of the fire. The landlord's resident manager gave her a

return of deposit form to complete. She filled out the form on February 22, 2009 and provided her address as the tenant's forwarding address for the return of the security deposit. She gave the form to the landlord's resident manager. The deposit was not returned. The tenant's daughter has telephoned the resident manager on a number of occasions but the resident manager has neglected or refused to respond to her requests. The tenant's daughter telephoned the landlord at his home in June, 2010. She said that the landlord promised to take the matter up with his accountant and then respond to her. She sent the landlord several e-mail messages after speaking to him but she then she has not received any response from the landlord. The daughter submitted this application for dispute resolution on September 20, 2010 and served the application by sending it to the landlord's home address by registered mail on September 22, 2010.

Analysis

The tenancy began in October 1986. The applicant testified that a deposit was paid by her mother at the commencement of the tenancy; she does not have a bank record showing the amount of the deposit paid. I find on a balance of probabilities that the tenants paid a deposit of \$240.00 at the commencement of the tenancy in October, 1986. Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.



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I am satisfied that the tenant provided the landlord with her forwarding address in writing when the applicant completed the landlord's return of deposit form and gave it to the resident manager on February 22, 2009, and I find that the applicants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$687.87; this includes interest of 207.87 that has accrued on the original deposit amount of \$240.00. The applicants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$737.87 and I grant the applicants monetary order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Dated: January 12, 2011.
