Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / the double return of the security deposit / and recovery of the filing fee. One of the tenants participated in the hearing and gave affirmed testimony.

Despite mailing of the application for dispute resolution and notice of hearing to the landlord by way of registered mail, the landlord did not appear. Included in the tenants' evidence is the Canada Post tracking number for the registered mailing. Section 90 of the Act provides that a document served by mail is "deemed to be received" on the 5th day after it is mailed.

Issues to be decided

- Whether the tenants are entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy was from January 1 to December 31, 2010. Monthly rent was $1,100.00, and a security deposit of $550.00 was collected.

On August 25, 2010, the landlord verbally informed the tenants that due to an impending foreclosure the tenancy would end. Subsequently, the tenants vacated the unit by September 30, 2010, and the landlord waived payment of rent for that month as a result of the circumstances.

By letter dated October 18, 2010, and sent by way of registered mail, the tenants informed the landlord of their forwarding address for the purpose of having their security deposit returned. However, to date, the security deposit has not been repaid. Further to this, the tenants seek reimbursement of $50.00 for the cost of cancelling post-dated

rent cheques for each of September, October, November and December 2010 (4 x $12.50), in addition to recovery of the $50.00 filing fee.

Analysis

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part as follows:

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

Further, section 38(6) of the Act provides:

> 38(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.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlord neither repaid the security deposit, nor filed an application for dispute resolution within 15 days after being informed in writing of the tenants' forwarding address.

In summary, I find that the tenants have established a claim of $1,200.00. This is comprised as follows:

$1,100.00: the double return of the security deposit (2 x $550.00);

$50.00: costs for cancellation of 4 post-dated rent cheques (4 x $12.50);

$50.00: filing fee

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$1,200.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced 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*.

DATE: March 14, 2011

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Residential Tenancy Branch