

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' application for a Monetary Order for return of double the security deposit and recovery of NSF fees. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

The landlord submitted that the hearing documents were served upon an adult person that resides with him. I accept that the tenants failed to serve the landlord in a manner that complies with the Act; however, the landlord acknowledged receiving the documents and was prepared to proceed with the matter. Accordingly, I deemed the landlord sufficient served under section 71 of the Act and I proceeded to hear from the parties.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Did the tenants establish an entitlement to recover NSF fees from the landlord?

Background and Evidence

The tenancy commenced July 1, 2010 and ended March 31, 2011. The tenants paid a \$475.00 security deposit on June 2, 2010.

The tenants testified that they verbally gave the landlord their forwarding address shortly before moving out. The landlord denied receiving a forwarding address from the tenants. The landlord testified he has had a security deposit refund cheque for the tenants to pick up since April 2011. The landlord testified that he is available for the tenants to pick up a refund cheque after 6:30 p.m. on weekdays and anytime on weekends.

The tenants submitted that the landlord cashed a post-dated cheque for April 2011 rent which was returned for insufficient funds. The landlord acknowledged the April 2011

rent cheque was deposited in error due to the tenants not giving written notice to end tenancy.

After I advised the tenants they are not entitled to return of double the security deposit without first giving a forwarding address to the landlord in writing, the tenants attempted to change their testimony to say they had given it in writing.

Documentary evidence provided for this proceeding was a copy of the security deposit receipt issued by the landlord on June 2, 2010.

Analysis

Under section 38(1) of the Act, a landlord has 15 days, from the later of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing, to either return the security deposit or make an Application for Dispute Resolution claiming against the security deposit. Failure to comply with the requirements of section 38(1) will entitle a tenant to return of double the security deposit under section 38(6) of the Act.

I find insufficient evidence that the tenants gave their forwarding address to the landlord in writing before making this application. Therefore, I find this application was premature and the portion of the tenants' claim that relates to return of the security deposit is dismissed with leave to reapply.

In the absence of documentary evidence to show the amount of NSF charges incurred by the tenants, I find the tenants have failed to establish an entitlement to recover \$42.50 from the landlord. I dismiss this portion of the tenant's claim without leave to reapply.

Conclusion

The tenants' claim for return of double the security deposit is premature and has been dismissed with leave to reapply. The tenants' claim for NSF fees was dismissed.

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 09, 2011.

Residential Tenancy Branch