



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for a return of their security deposit, doubled, and to recover the filing fee.

Although the tenant served the female landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail on April 21, 2011, the landlord did not appear at the hearing. The tenant provided a copy of the registered mail receipt, testified that the mail was sent to the address provided by the landlord and to which he mailed rent cheques and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act") on the female landlord only. The hearing proceeded in the landlord's absence.

The male tenant gave affirmed testimony and was provided the opportunity to present his evidence orally and in documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act (the "Act")*?

Background and Evidence

The evidence and testimony indicates this one year, fixed term tenancy began on June 14, 2009, continued thereafter on a month to month basis until it ended on March 31, 2011. A security deposit of \$1,000.00 was paid by the tenants at the time the tenancy began.

The tenant's relevant testimony indicated that the landlord was provided the tenants' written forwarding address on April 1, 2011. I viewed evidence that the tenants' forwarding address was presented to the landlords in an email transmission, which I note is not an accepted method for delivery of documents under section 88 of the Act.

The tenant testified that although the landlord indicated to him the cheque for \$1,000.00 for the return of his security deposit was mailed from Ontario on April 10, 2011, he did not receive the cheque of \$1,000.00 until April 26, 2011.

The evidence supplied by the tenant shows that the landlords mailed a cheque in the amount of \$1,000.00 to the tenants on April 13, 2011, for the return of their security deposit. I note the evidence was the envelope by Canada Post indicating a mailing date of April 13, 2011 and a copy of the enclosed cheque.

Despite this, the tenant submits that the tenants are entitled to another \$1,000.00 from the landlords as he did not receive the refund within fifteen days of the date a forwarding address was given to the landlords.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In order to justify payment of loss under section 67 of the *Act*, the applicant/tenants bear the burden to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the applicants pursuant to section 7.

The evidence and testimony supports that the tenants provided the landlords with their forwarding address on March 31, 2011. The submission was via email, which is not an accepted method of delivery of documents under the Act.

Nonetheless the landlords returned to the tenants the full amount of their security deposit within fifteen days of receiving that email transmission. The refund was mailed via Canada Post. Although I accept the testimony of the tenant that he did not receive the refund until April 26, 2011, the Act does not require that the return of the funds be in the tenants' possession within that time, only that the landlord *return* the security deposit.

I find that the landlord's placing the refund of the tenants' security deposit in the mail within fifteen days fulfills the requirements of Section 38(1) of the *Act*.

I therefore find that the landlords complied with the Act in returning the tenants' security deposit and I therefore **dismiss** the tenants' application, **without leave to reapply**.

Even had I not found that the landlords complied with the Act as described above, I would still find that the tenants' Application lacked merit and would dismissed the Application, for failure to provide the landlords a written, forwarding address in a manner complying with section 88 of the Act.

Conclusion

The tenants' Application is dismissed in its entirety, without leave to reapply.

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 12, 2011.

Residential Tenancy Branch