



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for return of double the security deposit. The landlord did not appear at the hearing. The tenant who appeared at the hearing confirmed he was representing both named tenants. The tenants provided a copy of the registered mail receipt, including tracking number, as proof of service upon the landlord. The registered mail was sent on July 27, 2011 to the landlord at the rental unit address. The tenant testified the registered mail was returned as unclaimed. The tenant explained that during the tenancy the landlord moved into the basement suite of the residential property and then moved into the rental unit after the tenancy ended. The tenant observed the landlord residing at the rental unit since the tenancy has ended. I accepted that the landlord was sufficiently served with the hearing documents and found that he was deemed to be served five days after mailing pursuant to section 90 of the Act.

Issue(s) to be Decided

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

Background and Evidence

A security deposit of \$425.00 was paid to the former owner of the property on October 18, 2008. At the end of June 2010 the property was transferred to the current owner. When the current owner acquired the property, he moved into the basement suite and informed the tenants that they had to vacate the rental unit as he intended to complete renovations. The tenants vacated the rental unit July 28, 2010.

At one point the landlord told the tenants to collect the security deposit from the former owner. The tenants were provided a "Seller Statement of Adjustments" by the former owner that showed the \$425.00 security deposit was transferred to the current owner on June 29, 2010 along with \$1.31 in accrued interest on the security deposit.

The tenant testified that several attempts to collect the security deposit from the current owner were made in person and after researching their rights and obligations under the Act, the tenant served the landlord with the tenant's forwarding address in writing. The forwarding address was given to the landlord, in person, by the tenant's wife on June 5, 2011 at the residential property and the tenant witnessed the service of the June 5, 2011 letter. Also included with the June 5, 2011 letter was a copy of the Sellers Statement of Adjustments.

Despite giving the landlord the forwarding address in writing, the landlord has not refunded the security deposit or made an Application for Dispute Resolution claiming against it. The tenants are now seeking return of double the security deposit.

Analysis

Section 93 of the Act provides that obligations of a landlord under the Act with respect to a security deposit run with the land. The Sellers Statement of Adjustments showing the transfer of the security deposit to the current owner is consistent with section 93 of the Act. Therefore, I am satisfied the security deposit is in the current owner's possession and the current owner had the obligation to administer the security deposit in accordance with the Act.

Section 38(1) of the Act requires that a landlord 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.

I accept the evidence before me that the tenants provided a forwarding address to the landlord in writing on June 5, 2011. Accordingly, the landlord had until June 20, 2011 to either repay the security deposit to the tenant or make an application for dispute resolution. Since the landlord did neither of these two options the landlord did not comply with section 38(1) of the Act and the landlord must now repay the tenants double the security deposit pursuant to section 38(6) of the Act. The tenants are also entitled to \$1.31 in accrued interest on the deposit from October 18, 2008.

Given the tenants were successful in this application I award the filing fee to the tenants. With this decision I provide the tenants with a Monetary Order to serve upon the landlord in the total amount of \$901.31, calculated as follows:

Double security deposit (\$425.00 x 2)	\$ 850.00
Accrued interest	1.31
Filing fee	<u>50.00</u>
Monetary Order	\$ 901.31

Conclusion

The tenants have been provided a Monetary Order in the amount of \$901.31 to serve upon the landlord and enforce as necessary.

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 01, 2011.

Residential Tenancy Branch