



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only. The landlord did not attend the hearing.

The tenant testified, and provided documentary corroboration, that she served the landlord with her Application and notice of this hearing by registered mail on October 11, 2011 and that she tracked the delivery and found that the package had been delivered and signed for by XXXXX.

Based on the above, I find the landlord has been served in accordance with Section 89 of the *Residential Tenancy Act (Act)*, and sufficiently for the purposes of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and for compensation for food and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted into evidence a copy of a handwritten tenancy agreement signed by both parties on July 29, 2009 for a month to month tenancy beginning on August 1, 2009 for the monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$1,000.00 paid.

The tenant submits that the tenancy ended on July 2, 2011. The tenant testified she provided the landlord with her forwarding address by email and by Canada Post mail no later than August 15, 2011.

The tenant also testified the fridge/freezer broke down in the last week of the tenancy and the landlord failed to replace it. As a result the tenant lost \$100.00 worth of meat, seafood and fish products she had in the fridge/freezer.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

The landlord is deemed to have received the tenants forwarding address by mail 5 days after it was mailed, pursuant to Section 90 of the *Act*. As such, I find, based on the tenant's undisputed testimony, the latest the landlord would have received the tenant's forwarding address is August 20, 2011. As a result, the landlord had until September 4, 2011 to return the security deposit or file an Application for Dispute Resolution seeking to claim against the security deposit.

As the landlord failed to return the security deposit or file an Application for Dispute Resolution, I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to the return of double the amount of the security deposit in accordance with Section 38(6).

As to the tenant's claim for losses resulting from the breakdown of the fridge/freezer, I accept the tenant's undisputed testimony and find the tenant has established that she suffered a loss as a result of the landlord's failure to provide and maintain a rental unit that make it suitable for occupation by a tenant (i.e. lack of fridge/freezer).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,100.00** comprised of \$2,000.00 double the amount of the security deposit and \$100.00 compensation for lost food.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: December 21, 2011.

Residential Tenancy Branch