



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 pet deposit and security deposit. There was no appearance by the landlord at the hearing. The tenant provided two registered mail tracking numbers as proof of service of the hearing documents upon the respondents. The tenant testified that the registered mail was sent to the landlords at the address as provided on the landlords' letterhead and envelopes used for conducting business as a landlord. The registered mail was unclaimed. I was satisfied the respondents were sufficiently served with notice of this proceeding and I continued to hear from the tenant without the landlords present.

Preliminary Issue

In filing a previous Application for Dispute Resolution (file no. 767264) the tenants had named an individual person as the landlord. That person submitted to the Residential Tenancy Branch that he was not the registered owner or the "official landlord" for the rental property. The tenants' application under file no. 767264 was dismissed with leave to reapply.

The tenants named two landlords in filing this application: a corporate entity and the same individual named in their first application. The tenants provided evidence to substantiate the identity of the landlords including copies of: several written letters from the landlord; the envelopes containing correspondence from the landlord; Notices of Rent Increase issued by the landlord; email correspondence with the landlord, the cheque stubs for return of the pet deposit and a portion of the security deposit. The tenant testified that the rent was made payable to the corporate entity.

I note that the letters to the tenants are signed by the individual respondent on the corporate respondent's letterhead; and the emails are from the individual respondent using the corporation's email account. However, the most convincing evidence that the individual was acting on behalf of the corporate landlord are the Notices of Rent Increase which in the space provided for Landlord's Name is the name of the individual respondent.

Section 1 of the Act provides for the definition of a landlord. The definition provides, in part, that a landlord is any of the following:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Upon review of the tenants' evidence, I find that both named respondents meet the definition of landlord under the Act. Accordingly, this decision and the Monetary Order that accompanies it identify both named landlords.

Issue(s) to be Decided

Did the landlord violate the Act with respect to return of the security deposit and pet deposit and are the tenants entitled to return of double the deposits?

Background and Evidence

The male tenant in attendance at the hearing testified as follows. The female tenant commenced a tenancy with the landlord in December 2008 and paid an \$875.00 security deposit and an \$875.00 pet deposit. In January 2009 both tenants entered in to a tenancy with the landlord and the deposits were carried forward to that tenancy agreement. The tenants did not provide a copy of a tenancy agreement; however, as evidence as to the identity of the tenants, the tenants provided copies of: the Form K completed under the *Strata Property Act*, letters addressed to both tenants by the landlord on July 20, 2010 and August 31, 2010; and a Notice of Rent Increase issued to both tenants August 30, 2010.

The tenant testified that the tenants vacated the rental unit October 31, 2011 and the female tenant provided the landlord with a forwarding address in writing at that time. There was no written consent for deductions from either deposit.

On November 22, 2011 a refund cheque was received by mail at the tenants' new address. The cheque was in the amount of \$765.00 representing their security deposit

less \$110.00 for cleaning charges. The cheque and the handwritten cleaning invoice are dated November 3, 2011.

The tenants contacted the landlord about the return of their pet deposit. In early December 2011 the full amount of the pet deposit was received in the mail at their forwarding address. The cheque was dated November 29, 2011.

Analysis

Section 38 of the Act provides for the return of security deposits and pet deposits. The Act permits a landlord to obtain the tenant's written consent for deductions from deposits or an Order from the Director authorizing deductions. Without authorization for deductions from the tenant or Director, section 38(1) requires that a landlord must either: return the security deposit or pet deposit to the tenant or make an Application for Dispute Resolution claiming against the security deposit or pet 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 or pet deposit, as applicable, pursuant to section 38(6) of the Act.

I accept the undisputed evidence before me that the landlord was provided the tenants' forwarding address in writing at the end of the tenancy on October 31, 2011. Accordingly, the landlord had until November 15, 2011 to either return the full amount of the deposits to the tenants or file an Application for Dispute Resolution to make a claim against the deposits.

By making unauthorized deductions from the security deposit, I find the landlord failed to return the full amount of the security deposit to the tenants and did not file an application claiming against the security deposit by November 15, 2011. The landlord also failed to return the pet deposit to the tenants within 15 days of the tenancy ending. Therefore, I find the tenants entitled to receive double the security deposit and pet deposit under section 38(6) of the Act.

I grant the tenants' request to recover \$1,860.00 from the landlord for violation of section 38(1) of the Act and I award the \$50.00 filing fee to the tenants. The tenants are provided a Monetary Order in the total amount of \$1,910.00 to serve upon the landlords and enforce in Provincial Court (Small Claims) as necessary.

Conclusion

The tenants' application was granted and the tenants have been provided a Monetary Order in the amount of \$1,910.00 to serve upon the landlords.

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 01, 2011.

Residential Tenancy Branch