



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of double their security deposit.

Service of the hearing documents, by the Tenants to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on October 13, 2011. Mail receipt numbers were provided in the Tenants' evidence. Based on the submissions of the Tenants I find the Landlords to have been sufficiently served notice of this proceeding.

The Tenants appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Landlords despite them being served notice of this proceeding in accordance with the *Act*.

Issue(s) to be Decided

1. Have the Landlords disbursed the security deposit in accordance with section 38 of the *Residential Tenancy Act*?
2. If not, have the Tenants met the burden of proof to obtain a monetary order for the return of double their security deposit, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenants affirmed that they entered into a written fixed term tenancy agreement that began on September 1, 2010 and was set to switch to a month to month tenancy after one year, August 31, 2011. Rent was payable on the first of each month in the amount of \$1,300.00 and on or before September 1, 2010 they paid \$650.00 as a security deposit and \$200.00 as the pet deposit. They vacated the rental unit on September 1, 2011, after a verbal mutual agreement to end their tenancy was reached with the Landlord.

The Tenants provided the Landlords with their forwarding address, in writing via e-mail, on September 4, 2011, which was responded to by the Landlords on September 15, 2011 at 9:51 a.m. The Tenants are seeking the return of double their deposit.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlords who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenants.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

In this case the evidence supports the tenancy ended on September 1, 2011, and the Tenants provided their forwarding address on September 4, 2011 which was received and responded to by the Landlords September 15, 2011.

In reviewing the manner in which the Tenants' provided their forwarding I find that e-mail had been previously established as a form of written communication between the parties and considering the Landlords sent a reply on September 15, 2011 attached to the original September 4, 2011 e-mail, I find that the Landlords were in receipt of the Tenants' forwarding address as of September 15, 2011. This is in accordance with Section 71 (2) (c) which stipulates the Director may make any of the following orders: That a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenants' security deposit in full or file for dispute resolution no later than September 30, 2011. The Landlords did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlords must pay the tenant double the security deposit.

As per the aforementioned, I find that the Tenants have succeeded in proving claim for the return of double the balance owed of her security deposit plus interest and I award them **\$1,700.00** (2 x \$850.00 + interest of \$0.00).

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$1,700.00**. This Order is legally binding and must be served 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 23, 2011.

Residential Tenancy Branch