



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This conference call hearing was convened in response to the tenants' application for the return of double the amount of the security deposit and to recover the filing fees associated with this application.

The tenants participated in the hearing and provided affirmed testimony. They testified that they served the Notice of a Dispute Resolution Hearing to the landlord by way of registered mail sent on December 16th, and provided a Canada Post tracking number. The landlord did not participate and the hearing proceeded in the landlord's absence.

Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit as claimed?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a half portion of a duplex. Pursuant to a written agreement, the tenancy started on April 1st 2009. The rent is \$525.00 per month and the tenants paid a security deposit of \$262.50 and a pet damage deposit of \$262.50.

The tenants testified that they gave the landlord notice to end tenancy August 31st, 2011, and said that they gave written notice of their forwarding address upon moving

out. They said that the landlord told them that they left rental unit in clean condition. When they did not receive their security deposit, they stated that they spoke with the landlord early September 2011, and that the landlord had said that he would not return their deposit because of scratches on the walls. The tenants told the landlord that the scratches were only caused by reasonable wear and tear. They said that they sent the landlord a further request for their security deposit with their forwarding address by registered mail on September 27th, 2011, and provided in their documentary evidence a Canada Post tracking sheet showing that the landlord refused to accept delivery on two attempts.

The tenants submitted a monetary claim for double the amount of the security deposit, which totals \$1050.00. The tenants confirmed at the hearing that the \$1500.00 claimed in their application is a mathematical error.

Analysis

I accept the tenants' undisputed testimony that they served the landlord with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the landlord knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address by registered mail. Refusing delivery of registered mail does not discharge the landlord's obligation towards the tenants. The security deposit was not returned and the landlord did not apply for dispute resolution as required by statute. Therefore the tenants are entitled to the return of double the amount of the security deposit.

Conclusion

The tenants established a claim of \$1050.00. Since the tenants were successful, I award the tenants recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the tenants a Monetary Order totalling \$1100.00.

This Order may be registered in the Small Claims Court and 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: January 18, 2012.

Residential Tenancy Branch