



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 tenants identified two co-landlords in filing this application; however, the tenant provided only one registered mail tracking number as proof of service of the hearing documents. The tenant submitted that the registered mail was sent to the male landlord on November 2, 2011 and it was successfully delivered. I was satisfied the male landlord has been sufficiently served with the hearing documents and I proceeded to hear from the tenant without the landlord present. I also amended the application to exclude the female landlord as I was not satisfied she was served with the hearing documents.

Issue(s) to be Decided

Have the tenants established an entitlement to return of double the security deposit?

Background and Evidence

On October 5, 2011 the tenant paid a \$700.00 security deposit under a verbal tenancy agreement. The verbal agreement was that rent was \$1,450.00 per month, inclusive of utilities. The landlord provided the tenant with a receipt for the \$700.00 payment and identified the payment as being a "deposit" on the rental unit.

On October 9, 2011 the landlord emailed the tenant a document he wished the tenant to sign. The document indicated utilities of \$88.09 per month would be payable in addition to the monthly rent. The tenant contacted the landlord over the telephone and reminded the landlord the agreement was rent was inclusive of utilities. The parties disagreed on this and the tenant verbally requested return of the security deposit. The landlord subsequently stopped taking the tenant's telephone calls.

On October 11, 2011 the tenant sent the landlord a letter via registered mail requesting return of the security deposit and provided the landlord with a forwarding address in writing. The tenant provided a copy of the letter and the registered mail receipt, along

with a print-out of the tracking number showing the landlord received the letter October 14, 2011.

The tenant confirmed that tenant he did not authorize the landlord to retain the security deposit in writing and that he has not received a refund of the security deposit to date.

Provided as documentary evidence for this proceeding were copies of: the security deposit receipt; the email from the landlord dated October 9, 2011 including the attached document; and the tenant's letter dated October 11, 2011 along with the registered mail receipt and tracking print-out from Canada Post for that letter.

Analysis

The Act provides that a landlord must not require or collect a security deposit at any time other than when a tenancy agreement is entered into. I am satisfied the landlord collected a security deposit on October 5, 2011 which satisfies me that a verbal tenancy agreement formed on that date. Although landlords are required to prepare written tenancy agreements, the Act applies to verbal tenancy agreement, meaning the parties have rights and obligations under the Act even if the tenancy agreement is verbal.

I am satisfied the tenant notified the landlord that the tenants would not be proceeding with taking possession of the rental unit, verbally on October 9, 2011, and in writing by way of the letter dated October 11, 2011. Thus, I find the tenancy came to an end October 14, 2011 when the landlord received the tenant's written notice.

Since the landlord was holding the tenant's security deposit, the landlord was required to comply with section 38(1) of the Act by either returning the security deposit to the tenants or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenants' forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

I find that the tenancy ended and the tenant provided as forwarding address to the landlord in writing on October 14, 2011 when it was received by the landlord but the landlord has not yet refunded or made an application for dispute resolution. Therefore, I find the landlord must now pay the tenants double the security deposit.

As the tenants were successful in this application, the tenants are awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenants a total of \$1,450.00 [(\$700.00 x 2) + \$50.00 filing fee].

The tenants must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,450.00 to serve upon the landlord.

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 24, 2012.

Residential Tenancy Branch