



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 tenant's Application for Dispute Resolution seeking a monetary order.

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

The tenant testified she served the landlord with the notice of hearing documents and her Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 2, 2011 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5th day after it was mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

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 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 tenancy agreement signed by the parties on August 16, 2010 for a 1 year fixed term tenancy for a monthly rent of \$1,900.00 due on the 15th of each month with a security deposit of \$950.00 paid on July 22, 2010. The tenancy ended on August 1, 2011.

The tenant provided copies of a string of email conversations discussing the disposition of the security deposit with the landlord starting on August 29, 2011 where the tenant provided the landlord with her forwarding address.

The tenant also provided testimony that she provided the landlord additionally with her forwarding address via registered mail she sent on November 4, 2011. The registered mail was returned to the tenant as unclaimed on December 24, 2011.

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 in writing, 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.

I accept that in matters related to the return of the security deposit, the tenant has established that she and the landlord communicated via email and as such, I find the provision of the tenant's forwarding address via email meets the requirements of "in writing" set out in Section 38(1).

I accept the tenant provided the landlord with her forwarding address in writing on August 29, 2011 and as the tenancy ended on August 1, 2011 I find the latest the landlord could have returned the security deposit to the tenant was September 12, 2011.

As the landlord has failed to this date to return the tenant's security deposit, I find the landlord has failed to comply with his obligations under Section 38(1) of the *Act* and I order the landlord to return double the amount of the security deposit in accordance with Section 38(6)

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,950.00** comprised of \$1,900.00 double the security deposit and the \$50.00 fee paid by the tenant for this application.

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: February 13, 2012.

Residential Tenancy Branch