



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in repose to the tenants application for the return of the tenants security deposit.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on April 16, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to recover double the security deposit?

Background and Evidence

The tenant testifies that this month to month tenancy started on February 01, 2012, and ended on March 25, 2012. Rent for this unit was \$795.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$392.50 on January 25, 2012.

The tenant testifies that she gave the landlords her forwarding address in writing and placed this letter in the property manager's mailbox on March 27, 2012. The tenant testifies she called the building manager on March 28, 2012 to check when the landlord would be returning the tenants security deposit. The tenant testifies that the building manager acknowledged that they had received the tenants forwarding address but informed the tenant that the landlord would not be returning the tenant's security deposit as the tenant had given inadequate notice to end her tenancy.

The tenant testifies that she has not agreed that the landlord may keep all or part of her security deposit. The tenant testifies that the landlord has failed to return her security deposit and the tenant now seeks to recover double the deposit.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the undisputed testimony presented I find that the tenant did post her forwarding address in the building managers mail box on March 27, 2012. When a letter is posted in a mail box it is deemed to be served three days after posting therefore the landlord is deemed to have received the tenants forwarding address on March 30, 2012 As a result, the landlords had until April 14, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security deposit and have not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim

for the return of double the security deposit to the sum of \$785.00 pursuant to section 38(6)(b) of the *Act*

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$785.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 07, 2012.

Residential Tenancy Branch