



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Preliminary Issues

The Advocate and Assistant advised they were informed by the Resident Building Manager that the Landlord had undergone a name change. They submitted into evidence copies of incorporation documents which prove the new company was incorporated July 25, 2011, prior to the end of the tenancy. They also supplied evidence that the owner of the property is still listed as XXXX XXXX XXXX Ltd who has the same address as the new incorporated company XXXX XXXX XXX LTD. There was further evidence that XXXX XXX Ltd may be an inactive company.

The Act stipulates tenancy agreements run with the land, therefore if XXX XX LTD or (through means of their Director XXXX XXX XXX) took over XXXX XXXX XXX Ltd or purchased the rental unit they would be responsible for matters pertaining to this tenancy. Based on the foregoing, in the absence of any evidence from the Landlord who did not appear despite being properly served notice of this proceeding, I accept the Tenant's assertion that the two companies and their Director meet the definition as Landlord, as defined by the Act. Accordingly, the application is hereby amended to include both corporate names and the Director's name as Landlord.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double her 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 May 17, 2012. Mail receipt numbers were provided in the Tenant's evidence. Based on the submissions of the Tenant I find the Landlord to have been sufficiently served notice of this proceeding; therefore I proceeded to hear from the Tenant in the absence of the Landlord.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenant submitted into evidence copies of: business incorporation certifications; property owner location reports; e-mails, letters to the Landlords dated October 14, 2011 and November 17, 2011; registered mail receipts; and Canada Post tracking information.

The Tenant confirmed she entered into a month to month tenancy agreement that began on May 1, 2001 and ended on August 31, 2011. On approximately April 17, 2001 the Tenant paid \$292.50 as the security deposit.

The Tenant advised that on several occasions she has attempted to recover her security deposit. She sent her first written request on October 14, 2011, and a second request was sent via registered mail on November 18, 2011. She confirmed that the resident building manager has advised her that the Landlord has changed names and they have directed her to attempt to collect from the new Landlord.

Analysis

The evidence supports the tenancy ended August 31, 2011 and the Tenant provided the Landlords with her forwarding address in writing via registered mail on November 17, 2011.

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 Tenant's security deposit in full or file for dispute resolution no later than December 2, 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 deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof and I award her a monetary amount of **\$601.80** (2 x \$292.50 + 16.80 interest on \$292.50)

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$601.80**. This Order is legally binding and must be served 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: July 13, 2012.

Residential Tenancy Branch