



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's request for return of double the security deposit. The tenant had named three respondent landlords in filing this application: one being the manager (referred to by initials BB) and the other two being the registered owners of the property. The tenant sent hearing packages to each of the named respondents via registered mail sent on May 5, 2012.

The registered mail sent to BB was addressed to her at the office in the residential property but returned with the notation the recipient was no longer the manager and there was no unit number provided on the envelope. The tenant testified the last communication he had with the manager was in September 2011 and he acknowledged that he did not confirm or verify that BB was still the manager when he sent the registered mail to her on May 5, 2012. I found that I was not satisfied that BB was still the manager at the time of mailing or that the tenant served BB at an address at which she resided at the time of mailing. Therefore, I found service was not affected upon BB and I excluded her from this proceeding.

The tenant testified that he determined the identity of the registered owners and their mailing address from the Land Title Office. The tenant attended the address provided to him and determined the location was being used as an office. On May 5, 2012 the tenant sent each of the registered owners a hearing package using the address provided by the Land Title Officer. The registered mail packages sent to the owners were returned as unclaimed. The tenant provided copies of the registered mail receipts, including tracking numbers, and copies of the returned registered mail envelopes for each of the respondents. Based upon the evidence before me, I found I was satisfied the registered owners were sufficiently served with the hearing packages and I proceeded to hear from the tenant.

Issue(s) to be Decided

Has the tenant established an entitlement to return of double the security deposit?

Background and Evidence

The tenant testified that on August 27, 2011 he gave BB a cheque in the amount of \$450.00 for a security deposit and a tenancy set to commence September 15, 2011. The manager provided the tenant with a receipt for the security deposit but did not prepare a written tenancy agreement.

The tenant arrived at the property on September 15, 2012 and found the unit was not ready for occupancy. Later in the evening he was given keys to the unit but told he could not move in or occupy the unit that night so he stayed in a hotel that evening. On September 16, 2012 the tenant returned to the property and deposited the keys and a letter in the mail slot at the office. In the letter the tenant requested return of his security deposit and provided his mailing address. The tenant received no response from the manager and all attempts he made to contact her were unsuccessful.

The tenant provided the following as evidence for this proceeding: copies of the registered mail receipts and envelopes for the hearing packages; the receipt issued for the security deposit; and, photographs taken of the unit by the tenant on September 15, 2012.

Analysis

The Act provides that a security deposit must not be collected by a landlord at any time other than when a landlord and tenant enter into a tenancy agreement. In this case the manager collected a security deposit on August 27, 2011 and in the absence of a written tenancy agreement I find a verbal tenancy agreement formed on that date. Verbal tenancy agreements meet the definition of a tenancy agreement under the Act and parties to a verbal tenancy agreement remain obligated to fulfill their obligations under the tenancy agreement and the Act.

Section 15 of the Act provides that obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, even if the tenant never occupies the rental unit. According, I find the landlords were obligated to comply with section 38 of the Act which provides for the return of security deposits.

Section 38(1) of the Act requires the landlord to either return the security deposit to the tenant or make an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's 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.

Since the landlords have not refunded or made an Application for Dispute Resolution to retain the security deposit and several months have elapsed since the tenant gave notice to end the tenancy and a forwarding address in writing, I find the landlord has violated section 38(1) of the Act and the tenant is now entitled to return of double the security deposit.

The tenant did not request recovery of the filing fee and I make no such award with this decision.

In light of the above, the tenant is provided a Monetary Order in the amount requested of \$900.00 to serve upon the landlords and enforce as necessary.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$900.00 to serve upon the landlords and enforce as necessary.

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 03, 2012.

Residential Tenancy Branch