



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a tenant's application for return of the security deposit. The landlord did not appear at the hearing. The applicant testified that the hearing documents were sent to the landlord via registered mail on May 17, 2012 to the place where the landlord carries on business as a landlord. The applicant submitted that the registered mail was successfully delivered. The applicant provided a registered mail tracking number as proof of service. I was satisfied that the landlord has been sufficiently served in a manner that complies with the Act and I proceeded with this hearing in the absence of the landlord.

On a procedural note, the rental agreement indicates the tenant is a corporation; however, the applicant is an individual. The applicant stated he is one of the principals of the corporation and the corporation paid the rent. The applicant stated that he is the one dealt with the landlord. I amended the application to identify the tenant so as to be consistent with the evidence before me.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit?
Should the security deposit be doubled pursuant to section 38(6) of the Act?

Background and Evidence

A tenancy agreement was entered into on October 18, 2011 and the landlord collected a security deposit of \$1,680.00 from the tenant. The tenant provided a copy of a one-page written document signed by the landlord that provides for certain terms of tenancy. The written document confirms receipt of \$3,360.00 cash for "first month's rent and damage deposit of a furnished suite starting November 1, 2011." The document indicates that the monthly rent was \$1,500.00 plus HST of \$180.00.

On February 5, 2012 the tenant returned possession and the keys to the landlord and asked the landlord to inspect the rental unit. The landlord declined to do so. The

landlord informed the tenant the security deposit would be coming from her accountant. The tenant submitted that a refund cheque was never received.

On April 12, 2012 the tenant's agent sent a registered letter to the landlord requesting return of the security deposit. A forwarding address was provided in the letter. The tenant provided a copy of the April 12, 2012 as evidence. The tenant verbally provided a registered mail tracking number during the hearing as proof of service of the registered letter.

The tenant stated that although he did not apply for return of double the security deposit he did not waive any entitlement to double.

Analysis

Pursuant to section 38(1) of the Act a landlord is required 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. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

Based upon the undisputed evidence before me, I find that the tenant, though its agent, provided a forwarding address to the landlord in writing via registered mail sent April 12, 2012. Pursuant to section 90 of the Act the landlord is deemed to be in receipt of the forwarding address five days later. Therefore, I find the landlord was required to return the security deposit or file an application no later than May 2, 2012.

Since the landlord failed to comply with section 38(1) of the Act, pursuant to section 38(6) of the Act, the landlord must now pay the tenant double the security deposit. I provide the tenant with a Monetary Order in the amount of \$3,360.00 to serve upon the landlord and enforce as necessary.

As information for the parties, a landlord is not permitted to collect HST on residential tenancies. Recovery of HST paid by the tenant was not part of this application and I make no order with respect to that issue. The tenant is at liberty to make a future application for recovery of HST.

Conclusion

The landlord is ordered to pay the tenant \$3,360.00 for return of double the security deposit. The tenant is provided a Monetary Order in this amount to serve upon the landlord 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 17, 2012.

Residential Tenancy Branch