



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was scheduled to deal with a tenant's application for return of double the unreturned portion of his security deposit. The landlord did not appear at the hearing. The tenant testified that the landlord was personally served with the hearing documents at her place of work on June 7, 2012. I was satisfied the landlord was sufficiently served with notification of this hearing and I proceeded to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of double the unreturned portion of his security deposit?

Background and Evidence

I was provided the following information by the tenant: The tenant paid a \$600.00 security deposit. The landlord did not prepare move-in or move-out inspection reports. The tenancy ended May 15, 2012. The tenant provided his forwarding address to the landlord on May 19, 2012 via text message. On May 27, 2012 the tenant received an electronic deposit to his bank account for return of \$400.00 of his security deposit. On June 5, 2012 the tenant filed this application and on June 6, 2012 the tenant received an email from the landlord's boyfriend entitled "moving out invoice". The attached invoice indicates the landlord deducted \$125.00 for new locks and an early move out fee and \$75.00 for standard cleaning.

The tenant testified that he did not authorize any deductions from his security deposit in writing.

The tenant further testified that the landlord did not prepare a written tenancy agreement and when the tenant asked for the landlord's home address she informed the tenant that she would not provide him with such information. The tenant explained that he paid his rent via electronic transfer/deposit and communication with the landlord was done via text message or email.

I requested the tenant provide me, within one week of the teleconference call, with a copy of the text messages or emails with respect to the forwarding address. The tenant provided a screen shot of a text requesting the landlord's home address, the landlord's response and the tenant's reply with his forwarding address. I cannot determine the date of these text messages. The tenant provided a copy of the email from the landlord's boyfriend dated June 6, 2012 and the moving out invoice sent to him.

Analysis

A landlord is required to comply with section 38(1) of the Act by either returning the security deposit and interest to the tenant or making 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.

From the evidence provided to me I am unable to determine the date the tenant sent the landlord his forwarding address via text message. It would appear to be after the tenant requested the landlord's home address but I am unable to determine whether the request for her home address was for service of the forwarding address or the hearing documents.

Where a tenant is to give a document to a landlord, the document is to be served in a manner that complies with section 88 of the Act. Sending a text message is not written communication given in a manner that complies with section 88 of the Act. Since the tenant was able to personally serve the landlord with the hearing documents at her place of work I find the tenant was likely able to do so with his forwarding address prior to filing this application. Accordingly, I am not satisfied the tenant has established that the only way to communicate his forwarding address to the landlord was via text message. Therefore, I find the tenant did not give his forwarding address to the landlord in writing in a manner that complies with section 88 of the Act prior to filing this application.

Nevertheless, I find the tenant is entitled to return of the \$200.00 the landlord withheld from his security deposit without the legal authority to do so. In order to make deductions from a tenant's security deposit the landlord must have the tenant's written consent or the authority of a Dispute Resolution Officer for the deduction. Further, consent for deductions for damage to the unit may only be sought if the landlord has completed the move-in and move-out inspection reports in accordance with the Act and

Regulations. The landlord did not prepare inspection reports and did not have the consent or authority to make deductions from the security deposit. Therefore, I order the landlord to pay the tenant the remainder of the security deposit.

Provided to the tenant with this decision is a Monetary Order in the amount of \$200.00 to serve upon the landlord and enforce as necessary.

Conclusion

The landlord is ordered to pay the tenant \$200.00 for the balance of his security deposit. The tenant has been 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 27, 2012.

Residential Tenancy Branch