



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 9, 2012, a Canada post tracking number was provided as evidence of service.

The tenant testified the package was returned and written on the package was that the person does not reside at the address. The tenant stated he doubled checked the address and is certain the address is correct and further he knows this to be the landlord's address as the landlord lives in the upper unit. The tenant stated the landlord is attempting to avoid service.

Under section 5(2) of the Act any attempt to avoid this Act is of no effect. Under section 89(1) of the Act the application for dispute resolution can be sent by registered mail to the address at which the person resides. However, legislation permits if the person is the landlord to the address at which the landlord carries on business.

Even if I accept the package was returned stating the landlord does not reside at the address, the landlord or the landlord agent carries on business at that location. Therefore, I find that the landlord has been duly served in accordance with the Act.

The tenant gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenant paid a security deposit of \$375.00. The tenant stated he was only in the unit for two days and vacated the premises on August 14, 2012, due to the landlord not fulfilling their obligation to make repairs that were agreed upon.

The tenant stated he verbally asked the landlord for the return of the security deposit, and he was told by the landlord that he would not return the deposit and by his personal experience the process took so longer that most people gave up.

The tenant stated on September 12, 2012, he provided a written letter to the landlord for the return of the deposit, in person, which was witness. The tenant stated he did not give the landlord permission to retain any money from the security deposit. Filed in evidence is a copy of the letter.

The witness for the tenant stated that he is the tenant's new landlord and on September 12, 2013, he drove the tenant over to the residence where he had resided for two days and he witnessed a man coming to the door in the upper unit and he witnessed the tenant providing him with a letter.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit, plus interest.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of **\$750.00**, comprised of double the security deposit (\$375.00) on the original amount.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced 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: February 08, 2013

Residential Tenancy Branch

