



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for the return of double the security deposit and to recover the filing fee from the landlord for the cost of this application.

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 March 07, 2013. Mail receipt numbers were provided by the tenant under sworn testimony. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Is the tenant entitled to recover double the security deposit?

Background and Evidence

The tenant testifies that this tenancy started on January 31, 2012 for a fixed term of six months and reverted to a month to month tenancy after this time. Rent for this unit was \$685.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$342.50 on January 31, 2012.

The tenant testifies that he attended a move in condition inspection with the landlord at the start of the tenancy. However when the tenancy ended on January 31, 2013 the landlord did not do a move out inspection of the property with the tenant and did not offer the tenant any opportunity to attend an inspection nor did the landlord complete a move out inspection report or give the tenant a copy of a report. The tenant testifies that he called the landlord on six occasions between February 04 and March 03, 2013 to arrange an inspection. The last phone call made informed the landlord that the tenant would be applying for Dispute Resolution. The tenant testifies that with each phone call the landlord did not pick up and messages were left for the landlord on an answering machine. The tenant has provided a copy of the tenant's phone records showing the calls made to the landlord.

The tenant testifies that he sent the landlord a letter by mail on February 14, 2013 containing the tenants forwarding address. The tenant testifies that this was followed up when the tenant also hand delivered a letter to the landlord's residence on March 30 which was left with a person residing at the landlord's residence. A copy of the letter has been provided in evidence.

The tenant seeks to recover double the security deposit as the landlord has not returned the deposit within the 15 allowable days. The tenant also seeks to recover the \$50.00 filing fee paid for this application.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented by the tenant I find that the landlord did receive the tenants forwarding address in writing on February 19, 2013 five days after it was posted on February 14, 2013. As a result, the landlord had until February 24, 2013 to return the tenants security deposit. I find the landlord did not return the security deposit and has not filed an application to keep it. I further find from the tenants testimony that the landlord failed to complete a move out condition inspection report of the rental unit at the end of the tenancy and the landlord has therefore extinguished their right to file a claim to keep the security deposit. Consequently, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$685.00** pursuant to section 38(6)(b) of the *Act*.

I find the tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$735.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: April 03, 2013

Residential Tenancy Branch