



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenants for the return of their security deposit including double the deposit amount. The hearing was conducted by conference call. The named tenant and her husband participated in the hearing. The landlord did not attend although she was served with the application and notice of hearing sent by registered mail on January 15, 2013. The hearing package was sent to the address provided by the landlord on the tenancy agreement. The landlord did not pick up the package and it was returned to the tenant. After she received the returned package the tenant telephoned the landlord, but the landlord refused to speak to her. The tenant served the landlord by sending the documents by registered mail to the address she provided in the tenancy agreement. Pursuant to section 90 of the *Residential Tenancy Act*, the landlord is deemed to have been served with the application and Notice of Hearing on the fifth day after it has been mailed. Failure or refusal to pick up a registered mail delivery is not a valid excuse for failing to attend a hearing and I find that the landlord has been properly served with the application and Notice of Hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit including double the amount?

Background and Evidence

The rental unit is an apartment in Surrey. The tenancy began on May 1, 2012 for a six month fixed term. Monthly rent was \$900.00 payable on first day of each month. The tenants paid a security deposit of \$450.00 on April 4, 2012.

The tenants moved out of the rental unit at the end of the term on November 1, 2012. At the move out the landlord returned \$212.00 from the tenants' security deposit. The landlord claimed to be entitled to keep \$38.00 for the cost of replacing a lock. The tenants did not agree to the deduction from their deposit. On December 12, 2012 the tenants sent the landlord a letter demanding repayment of the sum of \$238.00 and

providing their forwarding address. The letter was sent to the landlord by registered mail on December 19, 2012.

The landlord did not return the security deposit in full and did not file an application for dispute resolution to claim the deposit.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit.

I am satisfied that the tenants provided the landlord with their forwarding address in writing, and I find that the tenants served the landlords with documents notifying the landlord of this application as required by the *Act*.

Only a portion of the tenants' security deposit was refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I find that the tenants are entitled to an award in the amount of double the security deposit that the landlords held after the expiry of the 15 day period; this was the sum of \$238.00. I grant the tenants' application and award them the sum of \$476.00, being double the amount of the security deposit held by the landlord after the 15 day period. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$526.00 and I grant the tenants a monetary order against the landlords in the said amount. This order may be registered in the Small Claims 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: April 03, 2013

Residential Tenancy Branch