



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This is an application under the *Residential Tenancy Act* (the “Act”) by the tenants for a monetary order for return of double their security deposit, and to recover the filing fee.

The male tenant attended the hearing and stated that he was representing both tenants at the hearing as the female tenant was unable to attend the hearing. The tenant gave affirmed testimony, was provided the opportunity to present the tenants’ evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice”) was considered. The male tenant provided affirmed testimony that the Notice was served on the landlord by registered mail on January 11, 2013. The tenants provided a registered mail receipt with tracking number as evidence and confirmed that the name and address matched the name of the landlord and the service address of the landlord on the tenancy agreement. The tenancy agreement was also submitted in evidence. Documents sent by registered mail are deemed served five days after mailing under the *Act*. The tenant stated that the registered mail was returned as “unclaimed” approximately three weeks after it was mailed. I find the landlord was sufficiently served on the fifth day after mailing, in accordance with the *Act*.

Issue to be Decided

- Are the tenants entitled to the return of double the security deposit pursuant to section 38 of the *Act*?

Background and Evidence

A fixed term tenancy began on July 1, 2011 and was to expire on June 30, 2012; however, the tenant stated that through a verbal mutual agreement between the parties, the tenancy ended early by agreement when the tenants vacated the rental unit on May 31, 2012. Monthly rent in the amount of \$840.00 was due on the first day of each month. A security deposit of \$375.00 was paid by the tenants at the start of the tenancy.

The male tenant stated that the landlord did not conduct a formal written move-in or move-out condition inspection report. The tenant stated that they walked through the rental unit at the start of the tenancy and the end of the tenancy, but that they did not signed or were asked to sign a condition inspection report by the landlord.

The male tenant testified that he provided their written forwarding address on June 13, 2012 via text message to the landlord. The tenants did not submit documentary evidence in support of that text message dated June 13, 2012. The tenant stated that the normal way of communicating with the landlord was by phone or verbally in person; however, towards the end of the tenancy, the tenants began to text message the landlord. The male tenant denied having provided their written forwarding address in writing on a piece of paper, by phone or verbally to the landlord.

In June 2012, the male tenant stated that they received a cheque from the landlord dated June 25, 2012 in the amount of \$195.00 for the partial return of their \$375.00 security deposit. The male tenant stated that they did not agree to sign over any portion of the security deposit to the landlord.

The tenants are seeking double their security deposit, less the \$195.00 already received from the landlord as a partial return of their security deposit, plus their filing fee.

Analysis

Based on the above and the evidence provided, and on a balance of probabilities, I find the following.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[emphasis added]

The tenant testified that he provided their forwarding address via text message on June 13, 2012. The tenant stated that they did not provide their forwarding address in writing on a piece of paper. The tenant confirmed that their regular method of communicating with the landlord was over the phone or in person, and that text messaging with the landlord did not occur until towards the end of the tenancy. The tenants failed to provide documentary evidence of the text message with their forwarding address.

Text messaging is not an approved form of service under the *Act*. Based on the tenants' testimony, **I find** that the usual way of communicating between the parties was by phone or in person, and not by text messaging throughout the tenancy. **I find** the tenants did not provide their written forwarding address to the landlord as required by section 38(1) of the *Act*. Therefore, **I dismiss** the tenant's application for double their security deposit due to insufficient evidence, **without leave to reapply**.

I accept that the tenants have received \$195.00 of their original \$375.00 security deposit from the landlord, leaving a balance owing by the landlord to the tenants in the amount of \$180.00. **I grant** the tenants a monetary amount for their remaining security deposit balance of **\$180.00** pursuant to section 67 of the *Act*, as the landlord has not filed an application to claim towards the security deposit.

As the tenants were partially successful with their application, **I grant** the tenants the recovery of half of their filing fee in the amount of **\$25.00**.

I find the tenants have established a total monetary claim in the amount of **\$205.00** comprised of \$180.00 owing towards their original security deposit and \$25.00 of the filing fee. **I grant** the tenants a total monetary order in the total amount of **\$205.00**

pursuant to section 67 of the *Act*. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I dismiss the tenants' application for double the security deposit due to insufficient evidence, without leave to reapply.

I find the tenants have established a total monetary claim in the amount of **\$205.00** comprised of \$180.00 owing towards their original security deposit and \$25.00 of the filing fee. **I grant** the tenants a total monetary order in the total amount of **\$205.00** pursuant to section 67 of the *Act*. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 02, 2013

Residential Tenancy Branch

