



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 12, 2013, by the Tenant to obtain a Monetary Order for the return of their security deposit.

The Tenant submitted documentary evidence which indicates the Landlord was served with copies of the application for dispute resolution, Notice of dispute resolution hearing, and the Applicant's evidence, on March 14, 2013, by registered mail. Canada Post tracking information and a copy of the original envelope were provided in the Applicant's evidence. The package was returned to the Tenant and marked "unclaimed". Case law provides that refusal to pick up registered mail does not avert or avoid service. Therefore, I find the Landlord was deemed served notice of this proceeding effective March 19, 2013, five days after it was mailed, in accordance with section 90 of the Act. As the Landlord was deemed served, I proceeded in their absence.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: Canada post tracking information; the original package that was returned; the original monetary order issued with the incorrect spelling of the Landlord's name; a receipt for security deposit payment; various written communications between the parties.

The Tenant testified that he entered into a verbal tenancy agreement with the Landlord that began on July 9, 2012. Rent was payable on the first of each month in the amount of \$375.00 and on July 8, 2012, the Tenant paid \$175.00 as the security deposit.

The Tenant stated that on July 31, 2012, he served the Landlord with one month notice to end his tenancy effective August 31, 2012. He vacated the property on August 31, 2012, and provided the Landlord his forwarding address that same date.

He submitted that he attended dispute resolution on January 9, 2013, where he was granted a monetary order; however, that application was filed using an incorrect spelling of the Landlord's name. The Tenant could not enforce the Order because it had the incorrect spelling.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant and corroborated by is evidence.

In order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

The evidence supports that the tenancy ended August 31, 2012, and the Tenant provided the Landlord with his forwarding address that same day.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than September 15, 2012. She did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find the Tenant has succeeded in meeting the burden of proof to establish their claim. Accordingly, I award the Tenant the return of double his security deposit in the amount of **\$350.00** (2 x \$175.00).

Conclusion

The Tenant has been issued a Monetary Order for **\$350.00**. This Order is legally binding and must be served upon the Landlord. If the Landlord fails to comply with this Order it may be enforced 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: June 05, 2013

Residential Tenancy Branch

