



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 a conference call in response to an application made by the tenants for the return of all or part of the pet damage and security deposit and to recover the filing fee from the landlords for the cost of this application.

The tenants filed this application and served each landlord by registered mail with a copy of the application and Notice of Hearing documents to the rental unit address where the landlords were conducting business as landlords; also because the landlord had not provided them with a service address on the tenancy agreement. In support of this, the tenants provided a land title search document of the rental unit which shows the mailing address of the landlords being that of the rental unit. Section 90 of the *Residential Tenancy Act* states that documents served by mail are deemed to have been received five days later. Based on this, I find that the landlords were served the hearing documents as per the *Act*.

One of the tenants attended the hearing to give affirmed testimony and also represented the other tenant as an agent; the tenants also provided evidence in advance of the hearing. The third tenant was not named on this application and was not represented in this hearing. There was no appearance by the landlords, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence submitted was carefully considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The tenant testified that the tenancy started for the three tenants on September 1, 2012 for a fixed term of nine months. A residential tenancy agreement was signed on

September 2, 2012 which was provided as evidence for this hearing. Rent in the amount of \$1,900.00 was payable on the first day of each month by the tenants.

The tenant testified that the landlords collected from all the tenants a total of \$4,900.00 in deposits on September 1, 2012 which comprised of \$1,900.00 in a security deposit and \$3,000.00 as a pet damage deposit as documented by the tenancy agreement; the tenant testified that they did not know at the time, the landlord could not charge these amounts as deposits.

The tenant testified that the tenancy was mutually ended by e-mail with the landlords and tenants on April 30, 2013. The tenants left on April 12, 2013 after paying full rent for April, 2013 but they came back on April 30, 2013 to do a handover with the landlords. The tenant testified that the landlord failed to do a move-in or move-out condition inspection and on April 30, 2013 during the handing over of the keys, all three of the tenants personally served the landlord with their forwarding address in writing. One of the landlords signed the document, which was provided as evidence for the hearing and shows the forwarding address of each of the three tenants.

The tenant testified that shortly afterwards the landlords claimed that there was damage to the unit and as a result made a deduction from the deposits and returned individual amounts to all three of the tenants. The tenant testified that he only received \$526.96 from the landlord by email transfer on May 31, 2013 and did not consent to any deductions being made. The e-mail transaction was provided as evidence for the hearing. The tenant testified that the landlords gave back a total of \$4,326.96 to all three of the tenants by May 31, 2013. As a result the tenants claim return of double the amount of the deposits.

The landlord failed to attend the hearing or provide any written submissions prior to this hearing taking place.

Analysis

The tenants provided a copy of the signed tenancy agreement which shows the landlord took \$4,900.00 in deposits from the tenants and I accept this was the amount paid by the tenants.

Section 38(1) of the *Residential Tenancy Act* states that, within 15 days of the landlord receiving the tenants' forwarding address in writing after the tenancy ends, the landlord must repay the security deposit or make an application to claim against it. The tenant testified that the tenancy was mutually ended by e-mail with the landlords. In the

absence of any disputed testimony from the landlords, I accept that the tenancy ended in this manner.

The forwarding address was personally provided to the landlord in writing on April 30, 2013 and this was signed by one of the landlords; this is evidenced by the one of the landlord's signature on the document which matches the same landlord's signature on the tenancy agreement. Based on this and the absence of any testimony from the landlords, I find the tenants served the forwarding address in writing to the landlords in accordance with the *Act* and as a result the landlords were required to repay all the deposits or make an application to claim against them by May 15, 2013, neither of which the landlords did.

Section 38(6) of the *Act* states that if a landlord does not comply with the above, the landlord must pay the tenant double the amount of the deposits. Therefore, the tenants are entitled to the return of double the amount of the \$4,900.00 deposits already paid totaling \$9,800.00.

As the tenants have been successful in this monetary claim, I also award the tenants the \$100.00 filing fee for the cost of this application for a total amount of \$9,900.00. As the landlords have already returned \$4,326.96 to the tenants, the total amount awarded payable by the landlords to the tenants as a result is \$5,573.04.

Conclusion

For the reasons set out above, I grant the tenants a monetary order under section 67 of the *Residential Tenancy Act* for the balance due of \$5,573.04. This order must be served on the landlords and may then be filed 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: August 06, 2013

Residential Tenancy Branch

