



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was scheduled for 9:30 a.m. on this date to deal with cross applications. The tenant applied for return of double the security deposit. The landlords applied for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The landlords did not appear at the hearing despite leaving the teleconference call open for at least 14 minutes.

The tenant confirmed that she was served with the landlords' Application and evidence and was prepared to respond to the landlords' claims during this hearing. Since the landlords failed to appear at the hearing I dismissed their Application for Dispute Resolution without leave.

In filing the landlords' Application, two landlords were named. The female landlord signed the Application for Dispute Resolution indicating she had a Power of Attorney for the male landlord (as evidence by "POA" on the signature line). In filing the Tenant's Application the tenant named only the male landlord. The tenant explained that her tenancy formed with the male landlord only and that during the tenancy the woman who signed the landlords' Application became the landlord's girlfriend.

The tenant testified that she served the male landlord with her Application and hearing documents, with a witness present, within three days of filing her Application. I was satisfied the male landlord was served with the tenant's Application for Dispute Resolution in a manner that complies with the Act. Since the tenant named and served only the male landlord with her Application for Dispute Resolution any Monetary Order issued against the landlord with this decision shall name the male landlord only.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy commenced in June 2008 and the tenant paid a security deposit of \$800.00. The tenancy ended June 30, 2013. The landlord did not prepare a written tenancy agreement or condition inspection reports. The tenant confirmed that she did not authorize the landlord to make any deductions from the security deposit. The tenant provided her forwarding address to the landlord via text message on July 4, 2013.

The tenant submitted that she requested a move-out inspection with the landlord and expected to provide her forwarding address to the landlord at that time; however, the landlord would not schedule an inspection with her.

The tenant explained that communication between the landlord and tenant was by way of phone calls and text messaging as he had not provided her with a service address.

The tenant provided screen shots of her cell phone showing text messages exchanged between the parties between the dates of July 4 and July 9, 2013. On July 4, 2013 the tenant texted her forwarding address to the landlord. In subsequent text messages she asked the landlord to confirm receipt of her forwarding address. On July 9, 2013 the landlord responded with a "yes" and indicated the female landlord was looking into costs for a closet door and wall repairs. Also, on July 9, 2013 the tenant indicates the parties should do an inspection of the unit together.

Analysis

Upon consideration of the evidence and submissions presented to me, I provide the following findings and reasons with respect to the tenant's Application.

Unless a landlord has authorization to make deductions from a security deposit, section 38(1) of the Act requires a landlord to either return the security deposit and interest to the tenant or make an Application for Dispute Resolution within 15 days from the later of the day: the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

Based upon the tenant's undisputed submissions, I find the tenancy ended June 30, 2013 and the tenant did not authorize the landlord to make any deductions from the security deposit. I also have little doubt the landlord received the tenant's forwarding address via text message upon review of the text messages provided as evidence. At issue is whether receipt of the tenant's forwarding address via text message is sufficient as the Act provides that a landlord is entitled to receive the tenant's forwarding address "in writing".

Typically, a tenant provides a forwarding address to the landlord at the time of the move-out inspection or by giving the landlord a document that contains the tenant's forwarding address. The difficulty the tenant had in this case is that she was not provided the opportunity for a move-out inspection with the landlord and was not provided a service address by the landlord.

The Act provides that the tenant is entitled to certain documents and opportunities from a landlord including: a written tenancy agreement, that must include a service address for the landlord; that the landlord will schedule and participate in an inspection of the unit with the tenant at the beginning and end of the tenancy; and, that the landlord will prepare and provide the tenant with condition inspection reports. The condition inspection report is required to provide the landlord's service address.

I find the landlord's failure to provide required documentation and opportunities to the tenant left her lacking a service address for the landlord and I accept that the parties ordinarily communicated by way of text message and that this form of communication was largely effective.

Section 6 of the *Electronic Transmissions Act* also provides:

- 6** A requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is
- (a) accessible by the other person in a manner usable for subsequent reference, and
 - (b) capable of being retained by the other person in a manner usable for subsequent reference.

I am satisfied the criteria of the above provision have been met in this case.

In light of all of the above, I deem the landlord to be in receipt of the tenant's forwarding address in writing pursuant to the authority afforded me under section 62 of the Act

effective July 9, 2013. Section 62 provides that I may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

Since the landlord did not return the tenant's security deposit and interest to her or file an Application for Dispute Resolution within 15 days of July 9, 2013 I find the landlord failed to comply with section 38(1) of the Act and now the landlord must pay the tenant double the security deposit. I calculate the tenant is also entitled to \$7.02 in interest on the original amount of the deposit. I further award the tenant recovery of the filing fee she paid for her Application for Dispute Resolution from the landlord.

The tenant is provided with a Monetary Order calculated as follows:

Double security deposit (\$800.00 x 2)	\$ 1,600.00
Interest on original amount of deposit	7.02
Filing fee	<u>50.00</u>
Monetary Order	\$ 1,657.02

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlords' application has been dismissed without leave. The tenant has been provided a Monetary Order against the male landlord in the amount of \$1,657.02 to serve and enforce as necessary.

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: October 30, 2013

Residential Tenancy Branch