



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 24, 2013, by the Tenants to obtain a Monetary Order for the return of their security deposit and to recover the cost of the filing fee from the Landlord.

The Tenant provided affirmed testimony and submitted documentary evidence which indicates the Landlord was served with copies of the application for dispute resolution and Notice of dispute resolution hearing on September 25, 2013, by registered mail. Canada Post receipts were provided in the Tenants' evidence. Based on the submissions of the Tenant I find the Landlord is deemed served notice of this proceeding on September 30, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Landlord's absence.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order?

Background and Evidence

The Tenant testified that they entered into a fixed term tenancy agreement that began on September 1, 2009 and switched to a month to month tenancy after September 1, 2010. Rent was payable on the first of each month in the amount of \$1,200.00 and on September 1, 2009 they paid \$525.00 as the security deposit. No move in or move out condition inspection report forms were completed.

The Tenant stated that they provided the Landlord with written notice that they would be ending their tenancy on August 31, 2013. When the Landlord did not respond to their telephone calls or the notice this left her they e-mailed the Landlord. The Landlord e-mailed back to say she was away on vacation and would contact them upon her return.

The Tenant submitted evidence that they vacated the property before the end of August 31, 2013. They provided the Landlord with their forwarding address, in writing, by

registered mail on September 3, 2013, and again by e-mail. The Landlord has not returned their deposit; therefore, they are requesting the return of double the deposit.

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 their evidence.

I find that 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 the tenancy ended August 31, 2013, and that the Tenants provided the Landlord with their forwarding address in writing on September 3, 2013. The Landlord is deemed to have received the forwarding address on September 8, 2013, five days after it was mailed, pursuant to section 90 of the *Act*.

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 18, 2013. They 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 aforementioned I find the Tenants have met the burden of proof to establish his claim and I award them double his security deposit plus interest in the amount of **\$1,050.00** (2 x \$525.00 + \$0.00 interest).

The Tenants have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's application will be accompanied by a Monetary Order in the amount of **\$1,100.00** (\$1,050.00 + \$50.00). This Order is legally binding and must be served upon the Landlord.

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: November 05, 2013

Residential Tenancy Branch

