



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 as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for the return of double their security deposit, plus the recovery of the filing fee.

The tenants and three agents for the landlord (the "agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The agents confirmed that the landlord received the tenants' evidence and that the landlord had the opportunity to review the evidence prior to the hearing. The agents confirmed that the landlord did not submit evidence in response to the tenants' application. I find the landlord was served in accordance with the *Act*.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

A one year fixed term tenancy began on July 1, 2010 and ended on July 1, 2011. On July 1, 2011, another one year fixed term tenancy agreement was signed by the parties, which ended on June 30, 2013, as the fixed term tenancy agreement required the tenants to provide vacant possession of the rental unit as of June 30, 2013. The tenants vacated the rental unit on June 30, 2013. During the most recent tenancy agreement, monthly rent in the amount of \$1,680.00 was due on the first day of each month. A

security deposit of \$775.00 was paid by the tenants at the start of the first tenancy agreement, in July of 2010.

The second fixed term tenancy agreement ended on June 30, 2013 when the tenants vacated the rental unit, which required the tenants to provide vacant possession of the rental unit to the landlord as of June 30, 2013.

The parties agreed that the tenants provided their written forwarding address on the move-out condition inspection report dated June 28, 2013. The parties also agreed that the tenants did not surrender any portion of their security deposit to the landlord. The tenants applied for the return of double their security deposit on August 16, 2013, alleging that the landlord did not mail or post-mark the security deposit cheque until July 27, 2013, which is beyond the 15 day timeline permitted under section 38 of the *Act*.

The agents stated that they mailed a cheque to the tenants in the amount of \$775.00; however because the cheque was mailed to Canada from the United States of America, they did not have tracking on that mailed cheque and to date, that cheque has not been returned to the landlord. The tenants testified that they did not receive a first cheque as alleged by the landlord and only received one cheque for \$775.00 which was post-marked on July 27, 2013.

The landlord did not submit a copy of the alleged first cheque of \$775.00. The agents testified that a second cheque was mailed on July 27, 2013 and was back-dated by the landlord to July 4, 2013. The agents confirmed during the hearing that the landlord did not make an application claiming towards the tenants' security deposit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 38 of the *Act* applies which 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.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

In the matter before me, **I find** that the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants in writing on June 28, 2013, having not made a claim towards the security deposit and by not having the permission of the tenants to retain any portion of their security deposit.

I prefer the evidence of the tenants as the agents failed to provide a copy of the alleged cheque they claim to have written in the amount of \$775.00 which the tenants testified they did not receive, prior to the second cheque being issued by the landlord which was back-dated to July 4, 2013, yet mailed and post-marked on July 27, 2013. Therefore, **I find** the tenants are entitled to the return of double the original security deposit of **\$775.00**. I note that the tenants' security deposit accrued \$0.00 in interest since the start of the tenancy.

As the tenants were successful with their application, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$825.00**, comprised of \$750.00 for the doubled security deposit, plus the \$50.00 filing fee. **I grant** the tenants monetary order pursuant to section 67 of the *Act* in the amount of **\$825.00**. 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

The tenants have established a total monetary claim of \$825.00 comprised of the return of double their security deposit of \$750.00, plus the \$50.00 filing fee. The tenants have been granted a monetary order under section 67 in the amount of \$825.00. 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: December 16, 2013

Residential Tenancy Branch

