



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

The tenants filed this application and served the landlord by registered mail with a copy of the application and Notice of Hearing documents to the service address detailed on the tenancy agreement provided as evidence. The tenant provided the Canada Post tracking number and indicated that the landlord had refused to accept the documents. Section 90 of the *Residential Tenancy Act* (referred to as the Act) states that a document served in this way is deemed to have been received 5 days after such mailing. A refusal to accept or pick up registered mail documents is not sufficient to avoid service or file an Application for Review. As a result, I find that the tenants served the hearing documents to the landlord as required by the Act.

One of the tenants appeared for the hearing and provided affirmed testimony and documentary evidence in advance of the hearing. There was no appearance for the landlord or any evidence submitted in advance of the hearing, despite being served notice of this hearing in accordance with the Act.

All of the testimony and documentary evidence submitted by the tenant was carefully considered in this decision.

Issue(s) to be Decided

- Did the landlord receive the tenant's forwarding address in writing?
- Is the tenant entitled to double the amount of the security deposit?

Background and Evidence

The tenant testified that the tenancy began on September 1, 2009 for a fixed term. After this time, the tenant testified that the tenancy would recommence for a different period for which a new tenancy agreement was completed. The tenant provided the latest tenancy agreement which details the start date as being May 1, 2013 for a fixed term of one year. The tenant paid the landlord a security deposit of \$575.00 on July 30, 2009 which the landlord still retains. The tenant testified that the monthly rent was \$1,150.00 payable on the first day of each month.

The tenants left the tenancy on April 30, 2013 and made a request to the landlord, via e-mail, for the return of the security deposit after being denied the opportunity to use it for the last month's rent. The landlord requested the tenants' forwarding address which the tenant testified was supplied to the landlord via e-mail in mid May, 2013. As a result, the landlord applied to keep the tenants' security deposit by making a Landlord's Application for Dispute Resolution. As a result, the Residential Tenancy Branch scheduled a hearing to take place on August 22, 2013 and the landlord served the tenant with the hearing documents to the address provided by the tenant in his e-mail served in mid May, 2013. The tenant provided the file number for the hearing that took place on August 22, 2013 which shows that the tenant appeared for the hearing but the landlord did not. As a result, the Arbitrator dismissed the landlord's application.

Since this time, the landlord has failed to return the tenant's security deposit and the tenant now seeks the return of the security deposit as well as \$50.00 for courier costs.

Analysis

Section 38(1) of the Act states that, within 15 days of the landlord receiving the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application to claim against it.

The tenant testified that he provided the landlord with a forwarding address via e-mail in mid May, 2013. As the landlord made an application to claim against the tenants' security deposit and served the tenant with the hearing documents relating to a hearing on August 22, 2013, I find that the tenant provided the landlord with a forwarding address in writing as required by the Act.

The landlord failed to appear for the hearing scheduled on August 22, 2013 which was subsequently dismissed and I find that the landlord has failed to return the tenants' security deposit in accordance with the Act.

Section 38(6) of the Act states that if a landlord does not comply with the above requirements in relation to the return of a security deposit, the landlord must pay the tenant double the amount.

Therefore the tenant is entitled to \$1,150.00 in monetary compensation. As the tenant has been successful in this matter, I also award the tenant the filing fee of \$50.00 for the cost of this application for a total award of \$1,200.00. The tenants' request for \$50.00 courier costs is dismissed as this cost must be borne by a party as costs related to preparation for the dispute resolution process.

Conclusion

For the reasons set out above, I grant a monetary order in the amount of **\$1,200.00** in favor of the tenant pursuant to Section 67 of the Act. This order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) 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: December 18, 2013

Residential Tenancy Branch

