



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 a tenant's request for return of double the security deposit. The landlords did not appear at the hearing. The tenant submitted that the hearing documents were sent to the each landlord at their new address of residence via registered mail on September 12, 2013. The tenant provided the registered mail receipts, including tracking numbers, as proof of service. I was satisfied the tenants served the landlords in a manner that complies with the Act and I continued to hear from the tenant without the landlords present.

Issue(s) to be Decided

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

Background and Evidence

The tenancy commenced January 15, 2011 and the tenants paid a security deposit of \$325.00. The monthly rent was originally \$650.00 but increased to \$700.00 in April or May of 2012.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) on May 31, 2013 with a stated effective date of August 1, 2013. The tenants withheld rent for the month of July 2013 as permitted under section 51 of the Act. The tenant stated that the landlord was angry that the tenants had withheld rent for July 2013 and that the landlord wanted the tenants to pay at least one-half of the rent for July 2013 to cover utilities. The tenants did not pay the one-half of the month's rent as requested by the landlord.

The tenants moved out of the rental unit July 28, 2013. The tenants returned the keys to the landlord on August 1, 2013. When the tenant verbally requested return of the security deposit the landlord indicated the security deposit would not be refunded as the

tenants had refused to pay one-half of the monthly rent for July 2013 as the landlord had requested.

The tenant testified that the tenants did not authorize the landlord to retain any part of the security deposit and the landlord did not offer the tenants an opportunity to participate in a move-out inspection together.

On August 20, 2013 the tenant sent the landlord a letter requesting return of the security deposit and the tenant provided a forwarding address in the letter. The tenants have not received the security deposit and the landlords have not filed an Application for Dispute Resolution to retain it.

In addition to a written submission, the tenants provided as evidence a copy of the tenancy agreement; the 2 Month notice; the letter containing the forwarding address dated August 20, 2013; and, the registered mail receipts.

Analysis

Under the Act, unless the landlord has the written consent of the tenant or an Arbitrator to retain the security deposit, the landlord is required to comply with section 38(1) of the Act by either returning the security deposit to the tenant or making an application for dispute resolution within 15 days from the later of the date 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 evidence presented to me, I find the tenants provided a forwarding address to the landlord, in writing, after the tenancy ended and the landlords failed to either refund the security deposit or file an Application for Dispute Resolution to claim against the security deposit within 15 days of receiving the forwarding address. Therefore, I find the landlords must now pay the tenants double the security deposit pursuant to section 38(6) of the Act.

As the tenants were successful in this application, the tenants are awarded the filing fee paid for making this application. I calculate that the landlords are obligated to pay the tenants the following amount:

Double security deposit (\$325.00 x 2)	\$ 650.00
Filing fee	<u>50.00</u>
Monetary Order for tenant	\$ 700.00

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

Conclusion

The tenants have been provided a Monetary Order in the sum of \$700.00 to serve upon the landlord 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: January 14, 2014

Residential Tenancy Branch

