



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an Review Hearing for an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

The Tenant attended the hearing by conference call and gave undisputed testimony. The Landlord did not attend or submit any documentary evidence. The Tenant states that the Landlord was served with the notice of hearing package by Canada Post Registered Mail on February 8, 2014 and has provided a copy of an online search of the tracking history for this package. The online search shows that the package was sent on February 8, 2014 and that an attempted service was unsuccessfully made and that a notice for pick up was left. The Tenant, Y.D. states that as of February 20, 2014 that there is no change in the status of Canada Post online tracking system. I am satisfied based upon the undisputed evidence submitted by the Tenant that the Landlord has been properly served with the notice of hearing package.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

The Tenant seeks a monetary claim of \$1,000.00 which is for the return of double the \$500.00 security deposit. The Tenant states that the Tenancy ended on May 31, 2013 and that a demand in the form of a written letter was given to the Landlord by Canada Post Registered Mail on September 7, 2013 along with her forwarding address in writing to return the deposit. The Tenant has submitted a copy of the letter and a copy of the Canada Post Registered Mail online confirmation that the Landlord received and signed for the package. The Tenant stated in her direct testimony that the Landlord did not

have permission to keep the deposit nor is she aware if the Landlord filed an application for dispute resolution to keep the deposit. The Tenant states that neither she nor the Landlord has changed their mailing addresses and that the Landlord as of the date of this hearing has failed to return the security deposit.

Analysis

Section 38 of the Residential Tenancy Act speaks to the return of the security deposit and it states,

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I find based upon the undisputed evidence of the Tenant that the since the Tenancy ended on May 31, 2013 the Landlord failed to return the \$500.00 security deposit within 15 days of receiving the Tenant's forwarding address in writing on September 7, 2013. The Tenant has established a claim for \$1,000.00 under the Act. The Tenant is also entitled to recovery of the \$50.00 filing fee. I grant the Tenant a monetary order under section 67 for the amount of \$1,050.00. This order may be filed in the Small Claims Division of the Provincial Court for enforcement.

Conclusion

The Tenant is granted a monetary order for \$1,050.00.

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: February 28, 2014

Residential Tenancy Branch

