



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 landlords for the cost of this application.

Both tenants appeared for the hearing but only the male tenant provided affirmed testimony during the hearing. The tenants also submitted documentary evidence in advance of the hearing.

The tenants served each landlord by registered mail with a copy of the application, the evidence used in the hearing and the Notice of Hearing documents. The package was sent to the rental unit address where the landlords had moved into after the tenants had vacated the rental suite, but both packages were returned to the tenants as unclaimed. The male tenant testified that prior to the tenants moving out, the landlords had informed the tenants they were going to move back into the rental suite. The tenants provided e-mails which show that the tenants had visited the landlords at the rental suite, after they had vacated, on October 3, 2013. However, despite each of the landlords' vehicles being present outside the rental unit address, there was no answer by the landlords when both doors were knocked on by the tenants. The male landlord responded to the male tenant's e-mail stating that they were unable to answer the door as the male landlord was sleeping and the female landlord was having a bath.

Based on the affirmed testimony of the male tenant and the e-mail evidence provided, I find that the tenants sent the required documents to the address of the landlords. The tenants provided the Canada Post tracking numbers and the returned packages indicating that the landlords had refused to accept the documents. Section 90 of the *Residential Tenancy Act* (referred to as the "Act") states that a document served by mail is deemed to have been received 5 days after mailing it. 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 landlords as required by the Act.

There was no appearance for the landlords 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 tenants has been carefully considered in this decision.

Issue(s) to be Decided

- Did the landlords receive the tenants' forwarding address in writing?
- Are the tenants entitled to double the amount of the security deposit?

Background and Evidence

The male tenant testified that this month to month tenancy began on March 1, 2013. The tenants paid the landlords a security deposit of \$675.00 a week before the tenancy started which the landlord still retains. No written tenancy agreement was completed but rent was established in the amount of \$1,350.00 payable by the tenants to the landlords on the first day of each month. The tenancy ended on September 30, 2013.

The male tenant testified that on October 3, 2013 he went back to the rental suite to pick up his vehicle as he had problems starting it on the day of the move out. During this time, the tenants knocked on both doors of the rental suite in order to talk to the landlords and provide them with a forwarding address. However, there was no answer by any of the landlords despite both of their vehicles being present outside the rental suite.

The male tenant then sent the male landlord an e-mail on the same day requesting the return of the security deposit. The e-mail was submitted as evidence and provides a forwarding address for the return of the security deposit.

The tenants provided as evidence the male landlord's response to the above e-mail on October 4, 2013. In this e-mail the landlord writes that he has an intention to deduct electricity costs from the security deposit once the exact amount is known and the remaining balance will be held to recompense for damage caused to the property during the tenancy and during the move out by the tenants.

Since this time, the landlord has failed to return the tenants' security deposit and the tenants now seek its return.

Analysis

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

Based on the affirmed testimony of the male landlord, I accept that the tenancy ended on September 30, 2013 in accordance with the Act. Based on the e-mail evidence provided by the tenants which clearly documents the tenants' forwarding address and a request to return the security deposit to them, and the fact that the landlord responded to the same e-mail indicating that there was no intention to return the security deposit, I find that the landlord received the tenants' forwarding address in writing on October 4, 2013. Therefore, the landlords had until October 19, 2013 to either return the security deposit, seek the tenants' consent to make deductions from it, or make an application for dispute resolution to keep it, none of which the landlords did.

Section 38(6) of the Act further provides 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. Policy guideline 17 to the Act states that an arbitrator **will** order double the amount on an application for the return of the deposit or at the hearing. As a result, the tenants are entitled to \$1,350.00 in monetary compensation. As the tenants have been successful in this matter, I also award the tenants the filing fee of \$50.00 for the cost of this application for a total award of \$1,400.00.

Conclusion

For the above reasons, I grant a Monetary Order in the amount of **\$1,400.00** in favor of the tenants pursuant to Section 67 of the Act. This order must be served on the landlords and may then be filed and enforced in the Provincial Court (Small Claims).

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 19, 2014

Residential Tenancy Branch

