



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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant's agent and both landlords.

At the outset of the hearing I advised both parties that the hearing was based solely on the tenants' Application for return of the security deposit and not to determine the condition of the rental unit at the end of the tenancy. I advised the decision would be based on whether or not the landlords had complied with their obligations regarding the disposition of the security deposit.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement for a 1 year fixed term tenancy beginning on October 15, 2008 that converted to a month to month tenancy on October 15, 2009 for a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 and pet damage deposit of \$250.00 paid.

The parties agree the tenancy ended on August 31, 2013. The tenancy ended after the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of September 30, 2013. The tenant vacated the rental unit early as is allowed under the *Act*.

The tenant's agent testified the tenant provided the landlord with her forwarding address by having her mother post it on the rental unit door on September 2, 2013. The landlord

testified that they had not yet moved in to the rental unit on that date and it was sometime the following week that the landlords received the tenant's forwarding address.

The landlords confirmed that they wrote a cheque dated September 14, 2013 in the amount of \$560.00 and returned this to the tenant on the same day. The landlords confirm they withheld \$190.00. The tenant submits that the landlord sent the cheque to the tenant on September 25, 2013 as noted by the Canada Post date stamp on the envelope. The landlord could not explain the date stamp.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Section 88 states that all documents that are required or permitted under the *Act* to be given or served on a person must be given or served:

- a) By leaving a copy with the person;
- b) If the person is a landlord, by leaving a copy with an agent of the landlord;
- c) By sending a copy by ordinary or registered mail to the address at which the person resides or, if the person is a landlord to the address at which the person carries on business as a landlord;
- d) By leaving a copy at the person's residence with an adult who apparently resides with the person;
- e) By leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- f) By attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- g) By transmitting a copy to a fax number provided as an address for service by the person to be served;
- h) As ordered by the director under Section 71(1);

While I accept the tenant provide the landlord with her forwarding address and that the landlord received it I note that the tenant did not serve the address to the landlord in a method allowed under Section 88.

I find that the landlord did not yet reside at the rental unit where the tenant posted her forwarding address. In addition as the tenant had vacated the rental unit two days before and the landlords' intention was to move in to the rental unit itself, I also find that

the rental unit was no longer a location where the landlord conducted business as landlords.

Regardless of the above I find the landlord did receive the tenant's forwarding address and then acted upon receipt of that address. I accept that because the landlords had not yet moved into the property and it was no longer a location they conducted business as landlords that it is difficult for the landlord to establish when they first received the forwarding address.

I do accept the landlord's testimony that it was some time the week following the week of September 2, 2013. With no more specific information I find the landlord received the tenant's forwarding address no later than September 13, 2013. As such, I find the landlord had until September 28, 2013 to either return the deposits to the tenant or file an Application to claim against them.

From the evidence and testimony of both parties I accept the landlord had returned \$560.00 of the deposits held totalling \$750.00 before September 28, 2013. However as the landlords had no authority from the tenants to retain any portion of either deposit I find the landlords failed to comply with Section 38(1) and the tenant is entitled to double of both deposits pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$992.40** comprised of \$1,500.00 double deposits; \$2.40 interest; and the \$50.00 fee paid by the tenant for this application less \$560.00 already returned to the tenant.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: March 03, 2014

Residential Tenancy Branch

