



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Polderside Farms Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords for the cost of the application.

Both named tenants attended the hearing and each gave affirmed testimony. The tenants have also provided evidentiary material in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution, evidence and notice of hearing documents by personally handing them to an agent of the landlord at the landlord's residence, no one for the landlords attended the hearing. One of the tenants testified that they attended the landlord's residence and were greeted by the landlord's adult daughter who stated that the landlord was unable to go to the door, and the documents were handed to and accepted by the landlord's daughter. The tenants further testified that whenever the tenants attended the landlord's residence, the landlord's daughter attended to the business as an agent for the named landlords and the landlord company.

The *Residential Tenancy Act* defines a landlord as, in part, the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the *Act*, the tenancy agreement or a service agreement. The tenants have testified that business was conducted on more than one occasion with the landlord's adult daughter, and I find that the landlord's daughter is a landlord within the meaning of landlord under the *Residential Tenancy Act*.

The *Act* also requires that a person who is named as a respondent in an application for dispute resolution claiming a monetary award must be served by leaving a copy with the person, or if the person is a landlord, by leaving a copy with the agent of the landlord.

I am satisfied, in the circumstances that the landlords have been served in accordance with the *Residential Tenancy Act*.

The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participants who joined the conference call hearing were the tenants.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The first tenant testified that this fixed term tenancy began on August 1, 2013 and was to expire on July 31, 2014, however the tenants vacated the rental unit on September 26, 2013. Rent in the amount of \$950.00 per month was payable in advance on the 1st of each month and the tenants have paid for August and September 13, 2013. A written tenancy agreement, a copy of which has been provided, was signed by the parties on July 21, 2013, at which time the landlords collected a security deposit from the tenants in the amount of \$450.00. A receipt dated July 21, 2013 has been provided which shows that the landlord collected \$950.00 for the damage deposit and half of the rent for the month of August, 2013.

On October 29, 2013 the tenants attended at the home of the landlord and asked to speak with the landlord. Again the landlord's adult daughter answered the door and advised that the landlord had a head ache and couldn't go to the door. The tenant handed the agent a note that contained the tenants' forwarding address. The next day, the tenant emailed the landlord with the forwarding address requesting return of the security deposit. The landlord replied in an email dated November 12, 2013 that the tenants owe the landlords money, but the email does not specifically refer to the tenants' email requesting return of the deposit. Copies of the emails have been provided for this hearing.

The other tenant testified that a tenancy agreement had been prepared and left for the tenants to sign, but the landlord, when asked for a copy, provided a copy that did not match what the tenant had signed.

The tenants have not been served with an application for dispute resolution by the landlords, and the tenants claim double the amount of the deposit, or \$900.00 and recovery of the \$50.00 filing fee for the cost of the application.

Analysis

The *Residential Tenancy Act* specifies that a landlord must return a security deposit and pet damage deposit in full to a tenant or file an application for dispute resolution claiming against the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, and that if the landlord fails to do so, the landlord must be ordered to pay double the amount of the deposits to the tenant. In this case, I accept the undisputed testimony of the tenant and I find that the tenancy ended on September 26, 2013.

I also accept the testimony of the tenant that the landlord's agent was handed a note on October 29, 2013 that contained a forwarding address for the tenants and a request for return of the security deposit. Further, I have reviewed the emails, and I find that the email addresses for the landlord are consistent, in that the email sent to the landlord contains the same email address for the landlord as in the email that the landlord sent to the tenants. Therefore, I find that the landlords received the tenant's forwarding address in writing again by email on October 30, 2013.

The tenants have not been served with an application for dispute resolution, and therefore, I find that the landlord has failed to comply with the *Act* by failing to return the security deposit in full or applying for dispute resolution within 15 days of the date the landlords received the tenants' forwarding address in writing.

With respect to the amount, I have reviewed the receipt and note that it is for the deposit as well as for half a month's rent and is in the amount of \$950.00. The tenant testified that rent was \$950.00 per month, which is consistent with the tenancy agreement. The tenancy agreement also specifies that on July 21, 2013 the security deposit of \$475.00 was paid. Therefore, I find that the security deposit amount was half of \$950.00, or \$475.00.

I order the landlords to pay to the tenants double the amount of the security deposit, or \$950.00. Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00.

This order is final and binding on the parties and may be enforced.

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 12, 2014

Residential Tenancy Branch

