



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 the tenant's application to recover double the security and pet deposit and to recover the filing fee from the landlords for the cost of this application.

Service of the hearing documents, by the tenant to the landlords, was done in accordance with section 89 of the *Act*; served by registered mail on December 24, 2013. Canada Post tracking numbers were provided by the tenant in sworn testimony. The landlords were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlords, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for double the security deposit?

Background and Evidence

The tenant testifies that this tenancy started originally on December 01, 2012 for a six month term. At that time the rent was \$599.00 per month and the tenant paid a security deposit of \$300.00 and a pet deposit of \$200.00. The tenant and landlord entered into a new tenancy agreement on June 01, 2013 on the understanding that the landlord would do repairs and some upgrades in the unit. Rent was agreed at \$800.00 per month. The tenant paid a further \$100.00 security deposit at that time.

The tenant testifies that as the landlords did not do the required repairs or the upgrades agreed upon prior to entering into this new lease agreement the tenant gave notice to end the tenancy as the landlord had breached the agreement. The tenant testifies that she paid rent up to the end of October, 2013 but moved from the rental unit on October 15, 2013.

The tenant testifies that a forwarding address was sent to the landlord by registered mail on November 01, 2013. The tenant has provided the Canada Post Tracking information for this in testimony. The tenant testifies that she did not receive the deposits so contacted the building manager who sent the tenant a text message apologising and informing the tenant that a cheque was sent out on November 13, 2013. The tenant testifies that this cheque did not arrive until December 24, 2013. The cheque is dated November 11, 2013 however the date on the envelope is December 17, 2013. The tenant testifies that she had paid a total of \$600.00 for the security and pet deposit however the cheque was only for \$500.00. The tenant testifies that this cheque was cashed on January 02 or 03, 2014.

The tenant seeks to recover double the security and pet deposit less the amount of \$500.00. The tenant also seeks to recover the \$50.00 filing fee from the landlords.

Analysis

I have carefully considered all the undisputed evidence before me, including the sworn testimony of the tenant. Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security or pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on November 06, 2013 as any documents sent by registered mail are deemed served five days after posting. As a result, the landlords had until November 21, 2013 to return the tenant's security and pet deposit or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security or pet deposit within the 15 allowable days as although the cheque is dated November 11, 2013 it was not posted until December 17, 2013. There is no evidence to show that the landlords filed an application for Dispute Resolution to keep all or part of the deposits. Therefore, I find that the tenant has established a claim for the return of double the security and pet deposit to an amount of **\$1,200.00**, less the amount returned to the tenant of **\$500.00**, pursuant to section 38(6)(b) of the *Act*.

I further find the tenant is entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$750.00**. The Order must be served on

the respondents. Should the respondents fail to comply with the Order the Order may be enforced through the Provincial Court 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 19, 2014

Residential Tenancy Branch

