



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 repose to the tenants' application for the return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 05, 2013. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, 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

- Are the tenants entitled to recover the security deposit?

Background and Evidence

The tenants testify that this month to month tenancy started on June 01, 2012. Rent for this unit was \$900.00 per month. The tenants paid a security deposit of \$450.00 on May 16, 2012.

The tenants testify that they gave proper notice to the landlord to end their tenancy effective on October 31, 2013 and they vacated the rental unit on that day. The tenants testify that contained within their Notice was the tenants forwarding address in writing and request to return the security deposit to that address at the end of the tenancy. The Notice is dated September 23, 2013 and the tenants testify that this was sent to the landlord by registered mail. A copy of this letter containing the tenants forwarding address has been provided in the tenants' documentary evidence.

The tenants testify that they have got given the landlord written permission to keep all or part of the security deposit and the security deposit has not been returned to the tenants within 15 days of the end of their tenancy. The tenants request to amend their application to recover double the security deposit and their \$50.00 filing fee.

The tenant seeks to recover double the security deposit to the amount of \$700.00 as the landlord has not returned the security deposit within 15 days.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants undisputed documentary evidence and sworn testimony before me.

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 deposit to the tenants 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 tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy ended on October 31, 2013 and the landlord did receive the tenants' forwarding address in writing on September 28, 2013 as it is deemed to have been received five days after posting when sent by registered mail. As a result, the landlord had 15 days from the end of the tenancy, until November 15, 2013, to return the tenants' security deposit or file an application to keep it. I find the landlord did not return the security deposit and has not filed an application to keep it. Therefore, I find that the tenants have established a claim for the return of double the security deposit to the sum of **\$900.00** pursuant to section 38(6)(b) of the *Act*.

The tenants are also entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants amended monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$950.00**. The order must be served on the respondent and is enforceable 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 25, 2014

Residential Tenancy Branch

