



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of their security deposit under the Act, and to recover their filing fee.

The tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenants were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The tenants testified that their application, the Notice of Hearing and evidence was served on the landlord by registered mail on November 16, 2013. The tenants provided a registered mail tracking number in evidence and confirmed that the registered mail package was successfully delivered to the landlord on November 21, 2013, as the landlord signed for the registered mail package on that date. Based on the undisputed testimony of the tenants and without any evidence to prove the contrary, I find the landlord was served on November 21, 2013, the date the landlord signed for the registered mail package.

Issues to be Decided

- What should happen to the tenants' security deposit under the Act?
- Are the tenants entitled to a monetary order under the Act, and if so, in what amount?

Background and Evidence

The tenants stated that a fixed term tenancy agreement began on or about October 15, 2009 and reverted to a month to month tenancy after October 31, 2010. Monthly rent in the amount of \$800.00 was due on the first day of each month. A security deposit of \$400.00 was paid by the tenants at the start of the tenancy. The tenants stated that incoming and outgoing condition inspection reports were not completed by the landlord.

The tenants stated that they vacated the rental unit on May 31, 2013. The tenants provided their written forwarding address to the landlord by registered mail on September 4, 2013, and submitted a copy of their written forwarding address and the registered mail tracking number in evidence. The tenants testified that their written forwarding address was successfully delivered to the landlord on September 11, 2013, which is the date the landlord signed for the registered mail package containing their written forwarding address.

The tenants stated that they have not signed over any portion of their security deposit to the landlord and that they have not been served with any application from the landlord claiming towards their security deposit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

The tenants testified that they vacated the rental unit on May 31, 2013 and that on September 4, 2013, they mailed their written forwarding address to the landlord, which the landlord signed for on September 11, 2013. The tenants stated that the landlord has failed to return their security deposit. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) **repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

(d) **make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

(6) **If a landlord does not comply with subsection (1), the landlord**

(a) **may not make a claim against the security deposit or any pet damage deposit, and**

(b) **must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[emphasis added]

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenants. In the matter before me, I find the landlord received the written forwarding address from the tenants by registered mail on September 11, 2013, and did not file an application for dispute resolution claiming towards the tenants' security deposit and the landlord did not have any authority under the *Act* to keep any portion of the security deposit as the tenants did not authorize the landlord to retain any portion of their security deposit.

Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the tenants' security deposit in full or submitting an application claiming towards the tenants' security deposit within 15 days of receiving the forwarding address of the tenants in writing on September 11, 2013. Therefore, **I find** the tenants are entitled to the return of double their original security deposit of \$400.00, which as accrued no interest since the start of the tenancy, for a total of **\$800.00**.

As the tenants' claim had merit, **I grant** the tenants the recovery their filing fee in the amount of **\$50.00**.

I find that the tenants have established a total monetary claim of **\$850.00** comprised of \$800.00 for double their original security deposit, plus the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$850.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants' claim had merit. The landlord has breached section 38 of the *Act*.

The tenants have been granted a monetary order under section 67 in the amount of \$850.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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

