



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for: money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; the return of all or part of the pet damage or security deposit; and to recover the filing fee from the Landlords for the cost of this Application.

One of the Tenants appeared for the hearing and provided affirmed testimony during the hearing and written evidence in advance of the hearing.

The Tenants served the Landlords by registered mail on January 13, 2014 with a copy of the Application and Notice of Hearing documents, pursuant to Section 89(1) (c) of the Act. The documents were sent to the Landlords’ place of residence which consisted of the main portion of the house in which the Tenant rented the basement suite. The Tenants provided the Canada Post tracking number as evidence for this method of service. The Tenant testified that the package was returned ‘unclaimed’ by the Landlords.

A party is not able to avoid service by refusing to receive or pick up registered mail or use this as grounds to make a Review Application. In addition, Section 90(a) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. Based on this, and in the absence of any evidence from the Landlords to contradict this, I find that the Landlords were deemed served on January 18, 2014, pursuant to the deeming provisions of the Act.

There was no appearance for the Landlords or evidence submitted in advance of the hearing, despite being served notice of this hearing in accordance with the Act. As a result, I continued to hear the undisputed evidence of the Landlords which I carefully considered in this decision.

Issue(s) to be Decided

- Are the Tenants entitled to double the amount of the security deposit?

Background and Evidence

The Tenant testified that this tenancy of a basement suite started on March 1, 2012 on a month to month basis. No written tenancy agreement was completed but rent was established at \$1,000.00, payable by the Tenants on the first day of each month. The Tenants paid the Landlords a security deposit of \$500.00 on February 7, 2012. The Tenant provided a copy of the cheque given to the Landlords showing this amount, as well as a rent receipt which the Tenant testified was issued to them by the Landlords for the receipt of the security deposit.

The tenancy ended on November 30, 2013 after the Tenant gave written notice and the Tenant provided the Landlords with a written letter dated December 11, 2013 requesting the return of the security deposit with the Tenants' forwarding address. The Tenant testified that she personally served the Landlords with this letter on December 11, 2014 and testified that after this time she sent a text message about the return of her security deposit to this address to which the Landlords replied that they had an intention to return it to her once they had re-rented the basement suite. A copy of the Tenants' letter containing the forwarding address was provided for the hearing,

The Tenant testified that since this time she has not received her security deposit back from the Landlords and now claims double the amount back in the amount of \$1,000.00.

Analysis

Section 38(1) of the Act states that, within 15 days of the Landlord receiving the Tenant's forwarding address in writing after the tenancy ends, the Landlord must repay the security deposit or make an Application to claim against it.

Based on the undisputed testimony and evidence of the Tenants, I find the Tenants served the forwarding address in writing to the Landlords in accordance with the Act and as a result the Landlords were required to repay the security deposit or make an Application to claim against it by December 26, 2013, which the Landlords failed to do.

Section 38(6) of the Act states that if the Landlord does not comply with Section 38(1) of the Act, the Landlord must pay the Tenants double the amount of the security deposit.

The Tenants made a claim for double the amount of the security deposit and therefore, I find that they are entitled to \$1,000.00 in monetary compensation.

As the Tenants have been successful in this matter, I also award the Tenants the filing fee of \$50.00 for the cost of this Application, pursuant to Section 72(1) of the Act.

Conclusion

For the reasons set out above, I grant a Monetary Order in the amount of **\$1,050.00** in favor of the Tenants pursuant to Section 67 of the Act. This order must be served on the Landlords and may then be filed in the Provincial Court (Small Claims) and 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: April 25, 2014

Residential Tenancy Branch

