



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNNUS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to a Tenant's Application for Dispute Resolution (the "Application") for the return of all or part of the pet damage or security deposit.

The Tenant appeared for the hearing with his Co-tenant (who was not named on the Application) and provided affirmed testimony and documentary evidence in advance of the hearing. The Tenant testified that he served each Landlord named on the Application with a copy the Notice of Hearing documents by registered mail on December 19, 2013. The Tenant provided the Canada Post tracking numbers and mailing receipts and indicated that the Landlord had refused to accept the documents. Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received 5 days after it is mailed. A refusal to accept or pick up registered mail documents is not sufficient to avoid service or file an Application for Review. As a result, I find that the Tenant served the hearing documents to the Landlords pursuant to Section 89(1) (c) of the Act and these are deemed to have been received on December 24, 2012 in accordance with the Act.

The Landlords failed to appear for the hearing and did not submit any evidence in advance of the hearing, despite being served notice of this hearing. As a result, I have considered the undisputed testimony and evidence of the Tenants in this decision.

At the start of the hearing, I amended the Tenant's Application to include the recovery of the filing fee, pursuant to Section 64(3) (c) of the Act, as the Tenant had indicated in the details section of the Application that he wanted to recover the filing fee.

Issue(s) to be Decided

- Did the Landlord receive the Tenant's forwarding address in writing?
- Is the Tenant entitled to double the amount of the security deposit?

Background and Evidence

The Tenant testified that he rented the suite with another Tenant (the “Co-tenant”) under a single tenancy agreement. The Tenant was unable to recall the exact date the tenancy started but testified that it approximately started in May, 2010 for a fixed term of one year after which it continued on a month to month basis.

Monthly rent was payable to the Landlord in the amount of \$2,200.00 and the Tenant testified that at the start of the tenancy he paid the Landlord \$1,100.00 as a security deposit and \$1,100.00 as a pet damage deposit, for a total amount of \$2,200.00.

The tenancy ended when the Tenant and the Co-tenant moved out at the end of December 31, 2011. The Landlord’s agent and the Co-tenant conducted a move out inspection report on January 5, 2012. The Co-tenant testified that during this inspection he provided the Landlord’s agent with a forwarding address by writing it on a piece of paper. The Landlord’s agent in return provided the Co-tenant with a copy of the written condition inspection report on the same day, signed by the Landlord’s agent, and wrote on the report:

“Rec’d forwarding address. To me - - 2 sets of keys & 2 fobs”

[Reproduced as written.]

The Tenant testified that later in January, 2013, the Landlord returned \$1,217.60 of the total deposits held for repairs and other miscellaneous charges to which he had not consented to.

The Tenant testified that he made an application shortly afterwards to get his deposits back and a hearing was held with the Residential Tenancy Branch on June 6, 2013. However, the Tenant testified that he had failed to satisfy the arbitrator that he had provided the Landlord with a forwarding address as he had not submitted the document which he had been provided by the Landlord on January 5, 2013 confirming the receipt of the Tenant’s forwarding address; as a result, the application for the previous hearing was dismissed with leave to re-apply.

The Tenant testified that due to his busy work schedule he was unable to make this Application until December 13, 2013, and now claims double the amount of the security deposit as per the details section on the Application. The total amount claimed by the Tenant in the Application is \$2,164.80; however, the Tenant had determined this figure from previous applications and was confused as to how this amount was determined.

Analysis

Section 38(1) of the Act stipulates, within 15 days of the end of the tenancy and the Landlord receiving the Tenant's forwarding address in writing, the Landlord must repay the security deposit and pet damage deposit or make an Application to claim against it.

Based on the written evidence of the condition inspection report provided by the Tenant which indicates that the Landlord's agent received the Tenant's forwarding address, I find that the Tenant provided the Landlord's agent with a forwarding address on January 5, 2013 in writing as required by the Act. Therefore, the Landlords had until January 20, 2013 to either return the Tenant's security deposit or make an Application to claim against it, neither of which the Landlords did.

Section 38(6) of the Act stipulates that if a Landlord does not comply with the requirements of Section 38(1) as detailed above, the Landlord must pay the Tenant double the amount of the deposits. As the Landlord took from the Tenant, \$2,200.00 in total deposits, the Tenants are entitled to \$4,400.00 in monetary compensation, irrespective of the Tenant's claim amount on the Application.

As the Tenant has been successful in this monetary claim, I also award the Tenant the \$50.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act, for a total amount of \$4,450.00. As the Landlords have already returned \$1,217.60 to the Tenant, the total amount awarded to the Tenant as a result is \$3,232.40.

Conclusion

For the reasons set out above, I grant a Monetary Order in the amount of **\$3,232.40** in favor of the Tenant 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).

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 04, 2014

Residential Tenancy Branch

