



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a tenant's application for return of double the security deposit. The landlord did not appear at the hearing. The tenants submitted that they sent the hearing documents to the landlord at the residential property via registered mail on January 31, 2014. The tenants submitted that they sent their evidence to the landlord at the residential property via registered mail on May 5, 2014. The tenants provided copies of the registered mail receipts, including tracking numbers, as proof of service. The tenants submitted that the landlord lives at the residential property part time and they were given no other service address by the landlord. The tenants submitted that they met with the landlord at the residential property to sign a form of a tenancy agreement.

The Act requires that a landlord provide the tenant with their service address. In the absence of any other service address, and considering the parties met at the residential property to sign a tenancy agreement, I find the address that the landlord carries on business as a landlord is the residential property.

Section 89(1) provides for ways a party must serve the other party with an Application for Dispute Resolution involving a monetary claim. Section 89(1) provides the following acceptable method of service:

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

[my emphasis added]

Section 90 of the Act deems a person to have received mail five days after mailing even if the person does not accept or pick up their mail.

Based upon the circumstances presented to me and the service requirements provided under section 89(1)(c) of the Act, I find the tenants sent their Application for Dispute Resolution to the landlord at the place at which he carries on business as a landlord. I find the landlord is deemed to have been served with the tenants' Application for Dispute Resolution five days later on February 5, 2014. Therefore, I continued to hear from the tenants without the landlord present.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The tenants submitted the following undisputed submissions and evidence:

1. The parties entered into a short term rental agreement for the tenants to rent the rental unit for the month of December 2013 and an option to rent it for the month of January 2014.
2. The tenants paid the landlord \$1,100.00 in rent for the month of December 2013 plus \$150.00 for hydro.
3. The tenants also paid the landlord a security deposit of \$550.00.
4. The tenants vacated the rental unit January 1, 2014 and did not pay rent for January 2014.
5. On January 14, 2014 the tenants sent the landlord a letter to the landlord via regular mail and via email seeking return of their security deposit. The letter included their forwarding address.

The tenants submitted that they did not rent the unit for January 2014 because the landlord did not fulfill certain agreements to finish making repairs and install a full size fridge in the rental unit.

The tenants stated they did not authorize the landlord to make any deductions from the security deposit and they received no response to their request for return of the security deposit. As of the date of this hearing, the tenants still have not received a refund of their security deposit. Nor, has the landlord filed an Application for Dispute Resolution claiming against the security deposit.

In support of their Application for Dispute Resolution the tenants provided copies of the advertisement they placed online when looking for a short term rental; emails exchanged between the parties prior to the commencement of the tenancy; a duplicate

of the letter sent to the landlord on January 14, 2014; photographs of the condition of the rental unit; and, registered mail receipts.

Analysis

Unless a landlord has authorization to make deductions from a security deposit or the tenant has extinguished their right to its return, the landlord is required to comply with section 38(1) of the Act by either returning the security deposit to the tenant or making an Application for Dispute Resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

I was not presented any evidence to suggest the tenants extinguished their right to return of the security deposit. I accept that the tenants did not authorize the landlord to retain any part of the security deposit in writing.

Based upon the undisputed evidence before me, I find the tenancy ended January 1, 2014 when the tenants vacated the rental unit, as provided under section 44 of the Act.

I accept the tenants' testimony that they sent the letter of January 14, 2014 to the landlord via regular mail on that same date using the address where the landlord conducts business as a landlord. Therefore, I find the landlord was deemed to have received the tenants' forwarding address five days later on January 19, 2014 pursuant to section 90 of the Act.

In light of the above, the landlord had until February 3, 2014 to either pay the security deposit to the tenants or file an Application for Dispute Resolution to claim against it. I note that the tenants filed their Application seeking double the security deposit prematurely; however, I have previously found the landlord was deemed to have received the tenant's Application for Dispute Resolution on February 5, 2014 which is more than 15 days after the landlord was deemed to have received the tenant's forwarding address. Certainly, as of the date of the hearing, more than 15 days had passed since he was provided with their forwarding address. Therefore, I grant the tenants' request for return of double the security deposit.

I also award the tenants recovery of the \$50.00 filing fee they paid for their Application for Dispute Resolution.

The tenants are provided a Monetary Order in the total amount of \$1,150.00 to serve upon the landlord. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of the court.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,150.00 to serve upon the landlord and enforce as necessary.

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: May 23, 2014

Residential Tenancy Branch

