



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant's agent.

The tenant's agent testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 19, 2013 in accordance with Section 89. A review of Canada Post tracking information confirms the landlord received the documents on December 23, 2013

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit; for failure to provide a parking spot and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on November 1, 2013 for a month to month tenancy beginning November 1, 2013 for a monthly rent of \$2,000.00 due on the 1st of each month with a security deposit of \$1,000.00 paid. The tenancy ended on November 30, 2013.

The tenant's agent testified the tenant provided the landlord with his forwarding address on November 30, 2013 as confirmed by an email submitted into evidence. The tenant's agent submits the tenant has not yet received the forwarding address.

The tenant's agent testified the landlord had provided the tenant with a parking stall number for the parking of one vehicle as permitted in the tenancy agreement. The tenant's agent submitted the tenant parked in that stall and it belonged to another occupant and as such his vehicle was towed. The tenant has submitted into evidence a copy of the towing bill in the amount of \$171.60.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the tenant's undisputed testimony I find the landlord had received the tenant's forwarding address by email. While the *Act* does not stipulate when a document sent by email would be deemed to be received, the longest period for deemed reception is 5 days when a document is sent by registered mail. If I allow 5 days for the email to be deemed received, I find the landlord would have received the tenant's forwarding address by December 4, 2013.

As such, I find the landlord had until December 19, 2013 to either return the tenant's security deposit in full or file an Application for Dispute Resolution to claim against the deposit. As there is no evidence before me that the landlord took either of these steps, I find the landlord has failed to comply with Section 38(1) and as such the tenant is entitled to double the amount of the security deposit, pursuant to Section 38(6).

I note the tenancy agreement stipulates that the tenancy included parking for one vehicle. Based on the tenant's undisputed evidence and testimony I find the landlord failed to provide the tenant with the appropriate stall number and as a result the tenant suffered a loss. I accept the value of that loss to be established by the receipt submitted into evidence by the tenant.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$2,221.60** comprised of \$2,000.00 double the security deposit; \$171.60 towing charges; and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 07, 2014

Residential Tenancy Branch

