



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, FF

Introduction

This is a request to retain \$290.00 of the tenants security deposit and a request for recovery of the \$50.00 filing fee.

Some documentary evidence and written arguments have been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the landlord established a monetary claim in the amount of \$290.00?

Background and Evidence

The landlords testified that:

- On December 1, 2013 they found written notice from the tenant to end the tenancy.
- The notice was found in the mailbox in the building where tenants normally pay their rent.
- Notices to end tenancy are not normally dropped in this mailbox; people usually come to the office to give their notice.
- They had checked the mailbox in the morning on November 30, 2013, and again at approximately 5 p.m. on November 30, 2013.

- Since the notice was not received until December 1, 2013, they are requesting lost rental revenue for 10 days in the month of January 2014.

The tenant testified that:

- She put her notice to end the tenancy in the landlord's mailbox on November 30, 2013 and therefore believe that her notice was served within the required time frame to end the tenancy at the end of December 2013.
- She does not understand why the landlords did not find her notice in the mailbox.

Analysis

The tenant does have the right to serve a notice on the landlord in the landlord's mailbox; however documents served in that manner are not considered served until three days after being placed in the mailbox. A copy of section 90 of the Residential Tenancy Act is below:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.**

In this case however the landlords have admitted that they found the notice in the mailbox on December 1, 2013 and therefore that notice is deemed served on that date.

However any notice served in the month of December 2013 is valid for the end of the following month and therefore the tenants notice was not given in time to end the tenancy at the end of December 2013.

I therefore allow the landlords request for an Order for lost rental revenue for 10 days in the month of January 2013, however the amount claimed is incorrect. The landlords have claimed \$290.00 however the actual amount of 10 days rent is \$284.61.

I also allow the request for recovery of the filing fee.

Conclusion

I have allowed a total amount of \$334.61 and I therefore order that the landlords may retain \$334.61 of the tenants security deposit and the remaining \$90.39 must be returned to the tenant.

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 30, 2014

Residential Tenancy Branch