



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of double the amount of the Tenant’s security deposit and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. There was no appearance for the Landlord during the 20 minute duration of the hearing and no submission of written evidence prior to the hearing. As a result, I turned my mind to the Tenant’s service of the Notice of Hearing documents to the Landlord.

The Tenant testified that he served the Landlord with a copy of his Application and the Notice of Hearing documents to the Landlord on March 14, 2014 by registered mail. The Tenant provided the Canada Post tracking number as documentary evidence for this method of service and that it was sent to the Landlord’s address for service, as documented on the move in condition inspection report and in the letterhead of a letter served to the Tenant by the Landlord at the end of the tenancy.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) explains that a document served by mail is deemed to have been received five days after it is mailed. Furthermore, a party cannot avoid service by a failure or neglect to pick up mail and neither can this form the basis of a review application. Based on the evidence provided by the Tenant, I find that the required documents were served to the Landlord’s service address by registered mail pursuant to Section 89(1) (c) of the Act.

As a result, the hearing continued in the absence of the Landlord and the Tenant’s undisputed affirmed testimony and written evidence was carefully considered in this decision.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the amount of the security deposit?

Background and Evidence

The Tenant testified that this tenancy started with the Landlord and a previous renter (who was the Tenant's friend) on October 10, 2007. The previous renter provided the Landlord with a \$550.00 security deposit at the start of the tenancy and rent was established in the amount of \$1,000.00 payable on the first day of each month.

The Tenant testified that he joined this tenancy in March, 2009 as the previous renter's roommate and they both continued to pay rent to the Landlord under the same tenancy.

In December, 2010, the Tenant's friend left the tenancy and the Tenant continued the tenancy, paying the Landlord full rent. The Tenant testified that on the exit of the previous renter, in the presence of the Landlord, the Tenant paid the previous renter \$550.00 and the Landlord agreed to retain the original \$550.00 security deposit in trust paid by the previous renter as the security deposit for the tenancy.

The Tenant testified that on July 17, 2013 he provided the Landlord with written notice to end the month to month tenancy for August 31, 2013; the notice included the Tenant's forwarding address. The Tenant testified that by the time he left the tenancy the rental amount payable per month was \$1,302.54.

The Tenant vacated the rental unit at the end of August, 2013. Shortly afterwards, the Tenant was sent a letter to his forwarding address by the Landlord dated September 3, 2013. The letter was provided as evidence and indicates the Tenant's forwarding address as being received and explains that the Landlord made a deduction from the security deposit for cleaning and rubbish removal and returns \$159.61 in the form of a cheque.

The Tenant testified that he did not agree to the cleaning and garbage removal allegations and did not consent to the deduction being made. The Tenant testified that the cheque provided was not cashed and he sought to seek resolution from the Landlords for the return of the remaining amount which he still has not been given.

As a result, the Tenant seeks to claim double the amount back as a result of the Landlord not returning the full amount of the security deposit associated with his tenancy.

Analysis

Based on the undisputed testimony and documentary evidence provided for this hearing, I make the following findings based on the balance of probabilities.

I find that the Tenant had a right to the return of the security deposit at the end of the tenancy based on the fact that he was paying rent and had established a month to month tenancy with the Landlord.

I also find that the amount held by the Landlord was \$550.00 which was paid to the Landlord on October 10, 2007 by the previous renter which the Landlord was required to deal with at the end of the tenancy.

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

I accept the Tenant's testimony along with the letter issued to the Tenant by the Landlord that the tenancy ended on August 31, 2013. The Landlord's letter also indicates that the Tenant's forwarding address was received and I accept the Tenant's testimony that the address was provided to the Landlord before the tenancy ended. Therefore, the Landlord was required to act in accordance with the return of the security deposit provisions of the Act, by September 15, 2014.

However, I find that the Landlord failed to: make an Application to seek an arbitrator's authority to make the deductions; return the full amount back to the Tenant; or seek the Tenant's consent in writing to make deductions from the security deposit, by September 15, 2014

Section 38(6) of the Act states that if a Landlord does not comply with the above, the Landlord must pay the Tenant double the amount of the deposit.

Therefore, the Tenant is entitled to the return of double the amount of the security deposit in the amount of **\$1,100.00** plus interest which is calculated as **\$10.16** using the Deposit Interest Calculator on the Residential Tenancy Branch website.

As the Tenant has been successful in his 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. Therefore, the total amount awarded to the Tenant is \$1,160.16.

Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order, pursuant to Section 67 of the Act, in the amount of **\$1,160.16**. This order must be served on the Landlord and may then be filed in the Small Claims Court and enforced as an order of that court if the Landlord fails to make payment.

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: June 27, 2014

Residential Tenancy Branch

