



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, 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.

The tenant submitted documentary 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 March 11, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5th day after it was mailed.

The tenant has submitted tracking information on this registered mail confirming the landlord was informed twice by Canada Post that the package was available for pick up and that the landlord failed to pick up the registered mail. As such, I find the landlord is deliberately attempted to avoid service.

Based on the documentary evidence of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to Section 71(2) of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit 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 testified the tenancy began as a 1 year fixed term tenancy on January 1, 2013 that converted to a month to month tenancy beginning on January 1, 2014 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 and a pet damage deposit of \$350.00 paid.

Despite vacating the rental unit on January 15, 2014 the tenant testified that he had paid rent for the full month of January 2014. The tenant also testified that he served the landlord with his forwarding address by registered mail by January 31, 2014. The tenant submits that he has confirmed the landlord received this registered mail package.

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 undisputed testimony of the tenant I find that the tenancy ended on January 31, 2014. After allowing 5 days for registered mail to be delivered I find the landlord would have received the tenant's forwarding address no later than February 5, 2014.

As a result, I find the landlord had until February 20, 2014 to either return the deposit to the tenant in full or to file an Application for Dispute Resolution to claim against the deposit to be compliant with Section 38(1). There is no evidence before me that the landlord had filed an Application. Further and based on the tenant's undisputed testimony I find the landlord has failed to return the deposits to the tenant or file an Application.

Therefore I find the landlord has failed to comply with her obligations under Section 38(1) and the tenant is entitled to double the amount of the deposits paid pursuant to Section 38(6) of the *Act*.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,150.00** comprised of \$1,400.0 double the security deposit; \$700.00 double the pet damage deposit; 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: June 24, 2014

Residential Tenancy Branch

