



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 conference call in repose to the tenants' application for the return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on June 05, 2014. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The female tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to recover the security deposit?

Background and Evidence

The tenant testified that this month to month tenancy started on June 01, 2007. Rent for this unit was \$1,500.00 per month. The tenants paid a security deposit of \$700.00 on June 01, 2007.

The tenant testified that they were due to vacate the rental unit on May 31, 2012. The tenant testified that the landlord allowed the tenants to overhold at the unit for a few more days and then the tenants agreed to pay \$50.00 a day for the last four days. The tenants eventually moved out on June 09, 2012. The tenant testified that the landlord did not complete either a move in or a move out condition inspection report with the tenants at the start or end of the tenancy. The tenant testified that they did not give the landlord written or verbal permission to keep all or part of the security deposit.

The tenant testified that they wrote to the landlord requesting the landlord return the security deposit to the tenants and contained within this letter was the tenants' forwarding address. This letter sent to the landlord by registered mail on May 24, 2013. The tenant testified that the landlord has not returned the security deposit to the tenants and the tenants now seek to amend their claim to recover double the security deposit and the \$50.00 filing fee.

The tenant testified that the landlord sent the tenants a cheque for \$534.75. The cheque is dated September 24, 2014 and it was sent on September 26, 2014. With this cheque there was a letter stating that the landlord has withheld \$200.00 for four days the tenants overheld at the unit and \$32.00 for the disposal of some of the tenants' belongings which were left in the unit. The tenant agreed at the hearing that the landlord may now deduct \$200.00 but not the \$32.00 as the tenants have no idea what the landlord took to the dump.

Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants undisputed documentary evidence and sworn testimony before me.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy ended on June 09, 2012 and the landlord received the tenant's forwarding address in writing which was sent by registered mail on May 24, 2013 and is therefore deemed served five days later on May 29, 2013 pursuant to s. 90(a) of the *Act*. As a result, the landlord until June 13, 2013 to return the tenants' security deposit or file an application to keep it. I find the landlord did not return the security deposit and has not filed an application to keep it. Therefore, I find that the tenants have established a claim for the return of double the security deposit to the sum of **\$1,400.00** plus accrued interest of **\$16.75** on the original amount pursuant to section 38(6)(b) of the *Act*.

However at the hearing the tenant agreed the landlord could keep **\$200.00** of the security deposit for overholding at the unit. The tenant also agreed the landlord had sent a cheque for **\$534.75**. These amounts will therefore be deducted from the tenants' monetary award.

The tenants are also entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$665.25**. The Order must be served on the respondent. If the respondent fails to comply with the Order, the Order is enforceable through the Provincial Court 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: October 07, 2014

Residential Tenancy Branch

