



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding aka VanDyck Properties Ltd & Craft Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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, her agent and an agent for the landlord.

The tenant submitted documentary evidence each landlord named 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 August 21, 2014 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The tenant submitted the returned envelopes showing that the hearing documents were returned by Canada Post as unclaimed. The landlord's agent stipulated that they had not received the notice of hearing documents but that they had received the tenant's evidence that she sent in February 2015 and contacted the Residential Tenancy Branch to find out details about the hearing.

Based on the evidence of the tenant, I find that each landlord has been sufficiently served with the documents pursuant to the *Act*. I find the landlord's act of not claiming the notice of hearing packages sent by registered mail in August 2014 resulted in the landlord not being advised of this hearing. However I also find that had the tenant completed service of these documents as is required under the *Act* and she should not be prejudiced by the landlords' failure to retrieve their mail in a timely fashion.

As such, I am satisfied the landlords were sufficiently served with notice of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of 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 landlord submitted into evidence a copy of a tenancy agreement signed by the parties on December 28, 2013 for a 1 year fixed term tenancy beginning on January 1, 2014 for a monthly rent of \$800.00 due on the last day of each month with a security deposit of \$400.00 paid. The parties agree the tenancy ended on July 30, 2014.

The tenant testified that she had provided her forwarding address to the landlord on July 30, 2014 during the move out condition inspection and it was written on the move out condition inspection report.

The tenant submitted that the landlord provided her with a cheque dated August 1, 2014 in the amount of \$125.00 for return of some of the security deposit with \$275.00 held back by the landlord for a lease breaking fee. The tenant testified that the envelope that she received this cheque in was date stamped by Canada Post on August 22, 2014. The landlord's agent could not confirm when the landlord mailed this cheque.

The tenant submitted that when she received the \$125.00 cheque she contacted the landlord's agent who advised her to rip of the \$125.00 cheque and a replacement cheque for the full \$400.00 would be issued. The landlord's agent testified that she did not advise the tenant to rip up the cheque for \$125.00.

The tenant submitted that she then received a cheque for \$275.00 from the landlord. The tenant confirmed during the hearing that she still had both cheques from the landlord and that she had not cashed either one because she had already submitted her Application for Dispute Resolution.

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.

As the landlord's agent did not dispute that the tenancy ended on July 30, 2014 and that that was the same date that the landlord received the tenant's forwarding address, I find the landlord had until August 14, 2014 to either return the security deposit in full or to file an Application for Dispute Resolution claiming against the deposit.

As the landlord did not dispute the tenant's submission that the first security deposit cheque was not mailed to the tenant until August 22, 2014 I find that the landlord failed to comply with the requirements under Section 38(1) and the tenant is entitled to double the amount of the security deposit.

I note that based on the testimony provided in the hearing it appears that the cheques still in the possession of the tenant are likely to be stale dated. However, if the tenant is able to successfully negotiate these cheques they will contribute to the amount owed to the tenant as a result of this hearing.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$850.00** comprised of \$800.00 for double the amount of the security 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: March 13, 2015

Residential Tenancy Branch

