



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 on October 1, 2014. The Tenant applied for the return of double the amount of her security deposit, and to recover the filing fee from the Landlord.

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

The Tenant testified that she served the Landlord with a copy of the Application and the Notice of Hearing documents on October 8, 2014 by registered mail. The Tenant provided the Canada Post tracking number as evidence for this method of service and that it was sent to the rental unit. The Tenant testified that during the tenancy the Landlord received and collected her mail from the rental unit which was the reason why no service address for the Landlord was documented on the written tenancy agreement.

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 refusal or neglect to pick up mail.

Based on the undisputed evidence provided by the Tenant, I find that the required documents were served to the Landlord pursuant to Section 89(1) (c) of the Act, and that these documents were deemed to be received on October 13, 2015 under the Act. As a result, the hearing continued in the absence of the Landlord and the Tenant’s undisputed 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 on October 1, 2013 for a fixed term which continued on a month to month basis. Rent under the tenancy agreement was \$1,100.00 payable on the first day of each month. The Tenant paid the Landlord a \$550.00 security deposit on September 28, 2013 which the Landlord still retains.

The Tenant testified that the tenancy ended when the Landlord issued her with a two month notice to end tenancy for Landlord's use of the property which had an effective move out date of August 1, 2014. The Tenant moved out of the rental unit on July 31, 2014 in accordance with the notice to end tenancy and at this point she verbally provided the Landlord with a forwarding address.

The Tenant testified that she realized that she had to provide this address to the Landlord in writing. The Tenant explained that as the forwarding address she had verbally provided to the Landlord at the end of the tenancy had since changed, she decided to serve the new forwarding address to the Landlord in writing. The Tenant explained that she provided a new forwarding address to the Landlord by sliding a copy of it under the rental unit door on August 21, 2015; however, she was informed by the Residential Tenancy Branch that this was not proper service under the Act. The Tenant referred to a letter dated August 27, 2014 which contained the Tenant's new forwarding address. The Tenant testified that she then posted this letter to the rental unit door with a witness on August 27, 2014 to effect proper service under the Act.

The Tenant also explained that she still had access to mail going to the previous address which she had provided to the Landlord verbally. However, she had not received anything to this address.

Analysis

Based on the undisputed testimony and documentary evidence provided for this hearing, I make the following findings based on the balance of probabilities. Section 38(1) of the Act explains that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. I accept the Tenant's testimony that the tenancy was ended with the Landlord's notice to end the tenancy and that the Tenant vacated the rental suite on July 31, 2014. I also

accept the Tenant's undisputed evidence that she served the Landlord with her forwarding address in writing by posting it to the rental unit door on August 27, 2014.

Section 90(c) of the Act provides that a document served by posting it to the door is deemed to have been received three days later. Therefore, I find the Landlord received the Tenant's forwarding address in writing on August 30, 2014, being three days later. As a result, the Landlord was required to act in accordance with the return of the security deposit provisions of the Act by September 14, 2014. However, I find that the Landlord failed to make an Application to retain the Tenant's security deposit or return it back to the Tenant by September 14, 2014.

Section 38(6) of the Act explains that if a landlord does not comply with Section 38(1) of the Act, 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**. As the Tenant has been successful in her monetary claim, I also award the Tenant the **\$50.00** filing fee pursuant to Section 72(1) of the Act.

Therefore, the Tenant is granted a Monetary Order in the amount of **\$1,150.00**. 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.

Conclusion

The Landlord has breached the Act by not dealing with the Tenant's security deposit as required by the Act. Therefore, the Tenant is awarded double the amount of her security deposit in the amount of \$1,100.00

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: May 12, 2015

Residential Tenancy Branch

