



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 response to the tenant's application for a Monetary Order to recover double the security and pet deposit; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on April 14, 2015. Canada Post tracking numbers were provided by the tenant in documentary evidence. The tenant had filed his application on February 05, 2015 and was required to serve the landlord within three days of filing the application. The tenant testified that he had filed his application on line and did not receive it back from the Residential Tenancy Branch as it had gone to the tenant's junk mail. The tenant called the Residential Tenancy Branch and explained that he had not received his application and Notice of Hearing. The tenant was advised to serve the landlord immediately. I have allowed the hearing to continue today even though the tenant's application and Notice was not posted to the landlord within the three days after filing it. I find the tenant's application was sent within plenty of time prior to the hearing date and I do not believe that this delay would prejudice the landlord as the landlord would still have had ample time to receive the documents and respond prior to the hearing held today. 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 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

Is the tenant entitled to recover double the security deposit?

Background and Evidence

The tenant testified that this tenancy started on October 01, 2014 for a fixed term tenancy of one year. Rent for this unit was \$1,775.00 per month due on the 1st day of each month in advance. The tenant testified that he thought he had paid a security deposit of \$950.00 and a pet deposit of \$450.00; however, upon consideration of the tenancy agreement it is documented on page three of that agreement that the tenant paid \$887.00 for the security deposit and \$500.00 for the pet deposit,

The tenant testified that shortly after signing the tenancy agreement the tenant received a promotion at work and had to move out of Provence. The landlord and tenant signed a mutual agreement to end the tenancy effective on November 08, 2014. The tenant testified that he was instrumental in finding new tenants for the unit and a higher rent.

The tenant testified that he did vacate the rental unit on November 08, 2014 and did not give the landlord written permission to keep all or part of his security or pet deposit. The tenant testified that he provided his forwarding address in writing to the landlord at the address given by the landlord on the mutual agreement to end tenancy and on the tenancy agreement. This was sent by registered mail on January 06, 2015. The tenant has provided a copy of the letter sent to the landlord with his forwarding address and his request for the landlord to return the security and pet deposit to that address. The tenant has also provided Canada Post tracking information for this letter in documentary evidence.

The tenant testified that the landlord has not returned the tenant's security or pet deposit within 15 days and therefore the tenant seeks to recover double the security and pet deposit.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the 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 and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on January 11, 2015, five days after it was posted pursuant to s. 90(a) of the *Act*. As a result, the landlords had until January 26, 2015 to return all of the tenant's security and pet deposit or file a claim to keep it. As the landlord failed to do so, the tenant has established a claim for the return of double the security and pet deposit to an amount of **\$2,774.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

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

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 38(6)(b) and 72(1) of the *Act* in the amount of **\$2,824.00**. This Order must be served on

the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 04, 2015

Residential Tenancy Branch

