



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Madison Villa Enterprises Ltd Inc No. 802208
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD

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 testified 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 November 20, 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.

Tracking information available on Canada Post shows that both packages were refused by the recipients. As such, I find the landlords are deliberately attempting to avoid service,

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for an overpayment of rent and for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant testified the tenancy began in November 2006 as a month to month tenancy for the monthly rent of \$685.00 due on the 1st of each month with a security deposit of \$342.50 paid. The tenancy ended on August 31, 2014. The tenant testified that by the end of the tenancy the rent had increased to \$831.00.

The tenant testified that she provided the landlord with her forwarding address on several occasions. She stated she first gave it to them in writing on August 3, 2014.

The tenant submits she has not received her security deposit back from the landlord to this date.

The tenant also testified that she had provided the landlord with postdated cheques for the payment of rent. She stated that when the rent increased in August 2014 from \$814.00 to \$831.00 she provided the landlord with a replacement cheque and asked for the previously provided post-dated cheque to be returned.

The tenant has submitted banking confirmation that the landlord cashed both cheques for rent for the month of August 2014.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the tenant's undisputed testimony and documentary evidence I find the landlord received two payments for rent from this tenant for the same period. I find the tenant is entitled to the return of rent in the amount of \$814.00.

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 tenant's undisputed testimony that she provided the landlord with her forwarding address before the end of the tenancy, I find the landlord was required to either return the security deposit or file a claim against it within 15 days of the end of the tenancy to be compliant with Section 38(1).

As the tenancy ended on August 31, 2014 I find the landlord had until September 15, 2015 to comply with these requirements. Based on the tenant's undisputed testimony and the fact that there is no evidence before me that the landlord's filed an Application for Dispute Resolution claiming against the deposit I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,509.60** comprised of \$814.00 rent overpayment; \$685.00 double the security deposit; and \$10.60 interest on the security deposit held.

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 25, 2015

Residential Tenancy Branch

