



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application.

Only the Tenants appeared at the hearing. The Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants testified and supplied documentary evidence that they served the Landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on December 17, 2014. The Tenants confirmed that the address to which they sent the registered mail, was the address provided by the Landlord as her address for delivery at a previous hearing on November 19, 2014.

The Tenants served their Application materials on the Landlord by registered mail on December 17, 2014, less than a month from the November 19, 2014 hearing, and to the address which was provided by the Landlord during the November 19, 2014 hearing. The Tenant testified that the mail was redirected, by Canada Post, to the Landlord's new address, which they are informed is the home of the Landlord's sister. The Tenant further stated that she spoke to the new owner of the home in which the rental unit was located, and in which the Landlord resided, and the new owner confirmed that the Landlord had moved from the rental unit to her sister's.

Section 90 of the *Act* provides that documents served in this manner are deemed received five days later, namely December 22, 2014. The Tenants evidence indicates the registered mail was not claimed by the Landlord. I note that neglect or refusal to accept registered mail is not a ground for review under the *Act*. I find the Landlord has been duly served in accordance with the *Act*.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issues to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenants to double their security deposit?
2. Are the Tenants entitled to recover their filing fee?

Background and Evidence

The Tenants paid the Landlord a security deposit of \$700.00 on or about August 1, 2013. The Tenants vacated the premises on June 30, 2014.

The Landlord made an application for dispute resolution which was heard on November 19, 2014. At that hearing the Landlord confirmed her address for delivery as her sister's address in the same community as the rental unit. At that hearing, the presiding Arbitrator ordered that the Landlord return the security deposit to the Tenant's within 15 day of the hearing.

The Tenants testified that the Landlords have not returned the security deposit as ordered and accordingly they seek return of double the security deposit (\$1,400.00) pursuant to section 38. The Tenants also seek recovery of the \$50.00 filing fee for a total of \$1,450.00.

The Tenants testified that the Landlord did not perform an incoming condition inspection report. The Tenants further testified that the Landlord did not attend at the rental unit for the outgoing condition inspection report.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

By failing to perform incoming condition inspection reports in accordance with the Act, the Landlord extinguished the right to claim against the security deposit for damages,

pursuant to section 24(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies.

Therefore, I find the Landlord has breached section 38 of the Act. The security deposit is held in trust for the Tenants by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. It is not enough that the Landlord feel they are entitled to keep the deposit, based on unproven claims. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit and in fact was ordered to return the security deposit within 15 days of the previous hearing.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,450.00**, comprised of double the security deposit (2 x \$700.00) and the \$50.00 fee for filing this Application.

Conclusion

The Tenants are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: July 27, 2015

Residential Tenancy Branch

