



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of his security deposit.

The Tenant appeared for the hearing with an advocate who assisted the Tenant because he had hearing difficulties. The Tenant provided affirmed testimony through his advocate and also provided documentary evidence prior to the hearing. There was no appearance for the Landlords during the 15 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant.

The Tenant testified that each Landlord was served with a copy of the Application and the Notice of Hearing documents on March 25, 2015 by registered mail. The packages were sent to the Landlords’ address, which is the address of the motel in which the rental unit is located.

The Tenant provided the Canada Post tracking numbers into oral testimony as evidence to verify this method of service. These were recorded by me on the inside of the file cover. The Canada Post website indicates that these documents were received and signed for by the female Landlord on March 23, 2015. Based on the undisputed evidence of the Tenant, I find the Landlords were served with the documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”).

Issue(s) to be Decided

- Is the Tenant entitled to the return of his security deposit?
- If so, is the Tenant entitled to double the amount back?

Background and Evidence

The Tenant testified that this tenancy for a motel room began on October 25, 2015 on a month to month basis. Rent for the unit was \$650.00 per month and the Landlord was given \$325.00 as a security deposit at the start of the tenancy.

The Tenant testified that the tenancy ended on February 25, 2015. Upon his checking out of the unit, the Tenant was hoping to get back his security deposit at the front desk. However, the Landlord stated that the Tenant was required to provide a forwarding address after which it would be mailed to the Tenant.

The Tenant testified that he provided the Landlord with a forwarding address by writing it on a piece of paper and handing it to the Landlord on February 25, 2015. The Tenant testified that he received a letter from the Landlord dated March 3, 2015. This was provided into evidence. The letter confirms the Tenant's forwarding address and states that the Landlord is making a deduction of \$240.00 from the Tenant's security deposit for cleaning charges and \$17.13 for an unpaid phone bill. The Tenant testified that attached with this letter was a cheque in the amount of \$67.87 for the balance after the deductions were made.

The Tenant confirmed that he did not consent to these deductions and now seeks the return of the remaining amount of his security deposit for \$257.13. The Tenant confirmed that the amount he was seeking on his Application, \$240.00, was a calculation error. Therefore, I allowed the Tenant to amend his Application to correct the amount pursuant to Section 64(3) (c) of the Act.

Analysis

Section 38(1) of the Act states 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. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on February 25, 2015. I also accept the Tenant's evidence that he provided the Landlords with a forwarding address in writing on the same date. This is based on the Landlords' letter which satisfies me that they were in possession of the Tenant's forwarding address. There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenant to make the

deductions. Therefore, I find that the Landlord has failed to comply with Sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates 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. Based on the foregoing, I find the Tenant is entitled to double the return of his security deposit in the amount of \$650.00 (\$325.00 x 2).

As the Landlords have already returned \$67.87 to the Tenant, the total amount awarded is \$582.13. The Tenant is issued with a Monetary Order which must be served on the Landlords. The Tenants may then file and enforce this order in the Provincial Court (Small Claims) as an order of that court if the Landlords fail to make payment in accordance with the Tenant's written instructions. Copies of the order are attached to the Tenant's copy of this decision.

Conclusion

The Landlords have breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant is awarded double the amount back minus the amount already paid by the Landlords. Therefore, the Landlords owe the Tenant the balance of \$582.13.

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: August 27, 2015

Residential Tenancy Branch

