



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This new hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

A hearing was held and decision issued on June 10, 2015. That original hearing on this application was held in the absence of the landlord. The tenant was issued a monetary order in the sum of \$1,250.00, representing double the security deposit plus the \$50.00 filing fee.

On June 17, 2015 the landlord received the decision and on June 25, 2015 the landlord applied requesting reviewed consideration.

On July 6, 2015 a review consideration decision was issued granting a new hearing, based on the landlord's ground for review consideration.

Both parties were present at this new hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing.

Preliminary Matters

Initially the landlord said that she did not personally receive the registered mail sent by the tenant on August 25, 2015. The mail contained the tenants' hearing documents and evidence. The tenant provided the registered mail tracking number and a copy of the receipt as evidence of service. During the hearing the tenant went on to the Canada Post tracking web site and established that the mail was accepted on August 26, 2015. The signature recorded was S.G.; the landlord's initials.

The landlord denied having retrieved the mail but upon questioning conceded that her husband may have retrieved the mail and not shown it to her.

I found the landlord's testimony in relation to service of the tenants' original application and evidence evasive and that, on the balance of probabilities, the landlord was aware of the registered mail. Whether the landlord chose to look at that mail is not critical; it is the fact that it was received.

Therefore, I find that the landlord was served with the tenant's application and hearing documents on August 26, 2015. These documents were served as directed in the July 6, 2015 review consideration decision.

The landlord did not make a written submission.

Issue(s) to be Decided

Should the decision issued on July 10, 2015 be set aside, confirmed or varied?

Background and Evidence

The parties confirmed the facts as set out on page one of the June 10, 2015 decision.

Initially the landlord said her memory was not good and she did not recall receiving the tenants' written forwarding address. Later the landlord said she remembered "a little bit" and that she had received one registered mail package from the tenant, which contained only the written forwarding address. The landlord confirmed she received that address well before the June 10, 2015 decision was issued.

The tenant did not have the Canada Post tracking number for the mail sent that contained the written address but the tenancy ended by October 1, 2014 and he mailed the address sometime around October 6, 2014.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find on the balance of probabilities that the landlord received the tenants' written forwarding address no later than October 31, 2014. I found the tenants submission consistent and believable, compared to the landlords' vague recollection of the receipt of registered mail.

Therefore, I find that the landlord had until November 15, 2014 to either return the security deposit in full or to submit an application claiming against the deposit. The landlord did neither.

Therefore, pursuant to section 82(3) of the Act, I find that the decision and Order issued on June 10, 2015 is confirmed.

Conclusion

The decision and Order issued on June 10, 2015 is confirmed. The monetary Order is enforceable.

This decision should be read in conjunction with the decision issued on June 10, 2015 and the review consideration decision issued on July 6, 2015.

This decision is final and binding 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: September 08, 2015

Residential Tenancy Branch

