



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit. The landlord did not appear at the hearing. The tenant provided a registered mail receipt, including tracking number, and a copy of the registered mail envelope as evidence the hearing documents were sent to the landlord via registered mail on April 23, 2015. The registered mail was unclaimed by the landlord. The address used for service was the landlord's service address as provided on the tenancy agreement which was also the address where the tenant picked up the keys for the rental unit at the start of the tenancy.

I also heard from the tenant that she had previously filed an Application to seek return of the deposits and the hearing documents for that proceeding had been successfully delivered to the landlord at the same service address used for service of these hearing documents. The tenant's previous Application was dismissed with leave by the Arbitrator. The tenant provided the file number the previous Application for my reference and I have provided it on the cover page of this decision.

Section 90 of the Act deems a party to be served with documents five days after mailing even if the recipient does not accept or pick up the mail.

Based on the foregoing, I found the landlord to be deemed served with the hearing documents for this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit and pet damage deposit as claimed?

Background and Evidence

The two month fixed term tenancy commenced June 1, 2014 and ended July 31, 2014. The tenant paid a security deposit of \$600.00 and a pet damage deposit of \$500.00. The monthly rent was \$1,200.00 due on the 1st of the month. The tenant provided copies of the tenancy

agreement, including an addendum; bank statements to establish proof of payment of the deposits and rent; and, various text messages exchanged between the parties prior to, during, and after the tenancy.

The tenant submitted that the landlord did not invite the tenant to participate in condition inspections at the start and end of the tenancy and the landlord did not prepare condition inspection reports.

The tenant provided her forwarding address to the landlord via text message on August 13, 2014. The tenant provided her forwarding address to the landlord again by way of a letter sent via registered mail sent on March 9, 2015. The tenant provided copies of the text messages; the letter sent to the landlord on March 9, 2015; the registered mail receipt, including tracking number, and copy of the registered mail envelope as proof the letter was sent. The registered mail sent on March 9, 2015 was returned as unclaimed.

The tenant confirmed that she did not authorize the landlord to retain any part of her deposits and that she has not received a refund of any part of the deposits.

Analysis

Unless a landlord has a legal right to retain the security deposit or pet damage deposit as provided under the Act, section 38(1) of the Act provides that a landlord must either return the deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

Based upon the undisputed evidence presented to me, both orally and in the form of documentation, I accept that a tenancy formed between the parties and that the tenant paid to the landlord a security deposit of \$600.00 and a pet damage deposit of \$500.00. Further, I accept that the landlord has not refunded any part of the deposits to the tenant, the landlord did not obtain the tenant's written consent to keep any part of the deposits, and the landlord did not file a claim against the deposits.

In this case, I was not provided any information to suggest the tenant extinguished her right to return of the deposits. Rather, it would appear the landlord had extinguished his right to make deductions for damage since condition inspection requirements were not met.

The letter written by the tenant, the registered mail receipt, including tracking number, and the registered mail envelope provided for my review satisfy me that the tenant sent the landlord her forwarding address on March 9, 2015 at his service address via registered mail. Although the registered mail was unclaimed by the landlord, he is deemed to be served with it five days after

mailing under section 90 of the Act. Thus, I find the landlord is deemed to have been in receipt of the tenant's forwarding address in writing as of March 14, 2015 and the landlord had 15 days from then to either refund the deposits to the tenant or file an Application for Dispute Resolution to claim against the deposits. Since the landlord did neither I find the landlord violated the requirements of section 38(1) of the Act and I find the tenant landlord is now obligated to pay the tenant double the deposits pursuant to section 38(6).

In light of the above, I grant the tenant's request for return of double the deposits, or \$2,200.00. I further award the tenant \$50.00 for recovery of the filing fee paid for this Application. The tenant is provided a Monetary Order in the total sum of \$2,250.00 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant has been provided a Monetary Order for the amount of \$2,250.00 to serve and enforce upon the landlord as necessary.

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: September 25, 2015

Residential Tenancy Branch

