



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing by conference call and gave undisputed affirmed testimony. The landlords did not attend or submit any documentary evidence. The tenant stated that the landlords were both served via Canada Post Registered Mail on May 21, 2015 and have submitted a copy of the Customer Receipt Tracking number as confirmation. The tenant also stated that the two notice of hearing packages that were sent by Canada Post Registered Mail were returned by Canada Post as unclaimed after attempted service was made on May 26, 2015 and again on June 1, 2015. Based upon the above undisputed affirmed testimony I find that the landlords were both properly served with the notice of hearing packages and the submitted documentary evidence by Canada Post Registered Mail on May 21, 2015 as per section 88 and 89 of the Act and are deemed served as per section 90 of the Act on May 26, 2015 5 days later.

During the hearing the tenant clarified that the landlords' mailing address was 11862 and not 11892 as indicated on the tenant's application for dispute resolution. The tenant stated that there was no explanation for this other than it was probably human error. The tenant stated that this would not impact the tenant's application as the mailing address for the notice of hearing packages were sent to the dispute address as provided in the signed tenancy agreement. As such, the landlords' mailing address was updated to reflect the proper house number.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of double the security deposit and recovery of the filing fee?

Background and Evidence

This tenancy began on July 1, 2014 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 21, 2014. The monthly rent was \$700.00 payable on the 1st day of each month and a security deposit of \$350.00 was paid on July 21, 2014.

The tenant stated that notice to vacate the rental property was given to the landlord on July 31, 2014 in a letter dated July 31, 2014 and was confirmed as the landlord signed in receipt of the letter. The notice to vacate indicated that tenancy would end on August 31, 2014. The tenant stated that the tenant's forwarding address in writing was provided to the landlord on September 14, 2014 in a letter to the landlord which was served with a witness.

The tenant stated that as of the date of this hearing the landlord has failed to return the \$350.00 security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I find based upon the undisputed affirmed testimony of the tenant that the landlord has failed to return the \$350.00 security deposit within 15 days after the landlord received the tenant's forwarding address in writing on September 14, 2014. The tenant stated that she did not give any permission to the landlord to retain the security deposit and is not aware of any application filed by the landlord to dispute its' return. The tenant's application for a monetary order for the return of double the security deposit is granted.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the tenant's favour under the following terms which allows the tenant to recover her original security deposit plus a monetary award equivalent to the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security Deposit	\$350.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the Act	350.00
Recover Filing Fee	50.00
Total Monetary Order	\$750.00

The tenant is provided with this order in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: October 23, 2015

Residential Tenancy Branch

