



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for the return of double their security deposit and to recover the filing fee from the Landlords.

The male Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlords during the 20 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 Tenants.

The Tenant testified that the Landlords were each served with a copy of the Application and the Notice of Hearing documents on June 22, 2015 by registered mail. These documents were sent to the service address the Landlords provided on the tenancy agreement for this tenancy; the tenancy agreement was provided into evidence which shows this address.

The Tenants provided a copy of the Canada Post tracking numbers as evidence to verify the service method used. The Tenant explained that they were returned to them as unclaimed by each Landlord.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence before me, I find that both Landlords were deemed served with the required documents on June 27, 2015 pursuant to the Act.

Issue(s) to be Decided

Are the Tenants entitled to the return of double their security deposit?

Background and Evidence

The Tenant testified that this tenancy began on August 1, 2013 for a fixed term which ended on July 31, 2014 after which it continued on a month to month basis thereafter. Rent in the amount of \$1,600.00 was payable by the Tenants on the first day of each month. The Tenants paid the Landlords a security deposit in the amount of \$800.00 on July 7, 2013 which the Landlords still retain.

The Tenant testified that the tenancy ended on March 31, 2015. On this date the Tenants provided the Landlords with a forwarding address both verbally and by email. The email was not provided into evidence but the Tenant testified that they received an email response back from the Landlords which stated "OK". The Tenant explained that he could provide this email evidence if it was needed.

The Tenant testified that he discovered that email was not an acceptable form of service under the Act, so on the same date he sent a letter by mail to the Landlord's service address which asked for the return of their security deposit and provided them with their forwarding address in the letter.

The Tenant explained that they did not consent to any deductions or withholding of their security deposit by the Landlords. As a result, the Tenants now claim double the amount of their security deposit based on the failure of the Landlords to return it to them in accordance with 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.

I accept the undisputed evidence that this tenancy ended on March 31, 2015. I also accept the Tenant's undisputed oral evidence that they provided the Landlords with a forwarding address in writing. I accept the evidence that this was served to the Landlord by email based on the fact that the Landlords responded to the Tenants' email.

I also accept that the Tenants provided the same forwarding address to the Landlords in a letter dated March 31, 2015 which was sent to the Landlords by mail pursuant to Section 88(c) of the Act.

Although I am satisfied that the Landlords received the Tenants' forwarding address by email, If I accept that the Landlords were also served by mail, then Section 90(c) of the

Act would determine that it was deemed to be received by them on April 5, 2015. Therefore, the Landlords would have had until April 20, 2015 to comply with Section 38(1) of the Act.

The Tenant confirmed that they had not given written consent to the Landlords to keep their security deposit. I find there is no evidence before me that the Landlords made an Application within 15 days of receiving the Tenants' forwarding address or returned the security deposit back to the Tenants. Therefore, I find the Landlords have failed to comply with Section 38(1) 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 security deposit. Based on the foregoing, I find the Tenants are entitled to double the return of their security deposit in the amount of **\$1,600.00**. There is no interest payable on this amount.

As the Tenants have been successful in this matter, I also award the Tenants the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenants is **\$1,650.00**. The Tenants are issued with a Monetary Order for this amount. This order must be served on the Landlords and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlords fail to make payment.

Conclusion

The Landlords have breached the Act by failing to deal properly with the Tenants' security deposit. Therefore, the Tenants' claim for the return of double their security deposit and recovery of the filing fee is granted in the amount of \$1,650.00

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: November 04, 2015

Residential Tenancy Branch

