



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

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 their security deposit and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”). The Tenants also applied to recover the filing fee from the Landlords and for “Other” issues.

Preliminary Issues

Both Tenants 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 25 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 male Tenant testified that the Landlords were served with a copy of the Application and the Notice of Hearing documents on July 2, 2015 by registered mail. The Tenants provided the Canada Post tracking number into oral evidence which is noted on the front page of this decision. The female Landlord testified that shortly after the documents were sent to the Landlords, she received an email from the female Landlord which explained that they had refused the documents which were attempted to be delivered to them. The male Landlord allowed me to look at the Canada Post website using the tracking number he had provided. The Canada Post website indicates that several notices were left for the Landlords to pick up documents for this hearing which were then returned back to the Tenants.

Section 90(a) of 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 the Landlords were deemed served with the required documents on July 7, 2015 pursuant to the Act.

At the start of the hearing, the Tenants withdrew their claim for monetary compensation relating to the utility bills as they only wanted to deal with their security deposit. As a result, I provided the Tenants leave to re-apply for this portion of their claim.

Issue(s) to be Decided

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

Background and Evidence

The Tenants testified that this tenancy began on October 11, 2014 for a fixed term which ended on March 31, 2015. The Tenants testified that they paid the Landlords \$950.00 as a security deposit at the start of the tenancy which the Landlords still retain.

The male Tenant testified that after they had vacated the rental unit on March 31, 2015, the male Tenant and his brother in law attended the Landlord's address on May 9, 2015 and personally served the female Landlord with a letter. The letter contained their forwarding address as detailed on the Application. The Tenants confirmed that they did not consent to any deductions or withholding of their security deposit by the Landlords. Therefore, they now seek double the return of the security deposit.

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 Tenants' undisputed oral evidence that they provided the Landlords with a forwarding address in writing and that this was served to the female Landlord personally on May 9, 2015. Therefore, the Landlords would have had until May 24, 2015 to comply with Section 38(1) of the Act.

The Tenants 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 **\$1,900.00**. 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 **\$1,950.00**.

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 \$1,950.00. The remainder of the Tenants' Application was withdrawn by the Tenants and they are at liberty to re-apply for this portion.

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 24, 2015

Residential Tenancy Branch

