



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for monetary order for double his security deposit, plus the recovery of the cost of the filing fee.

The tenant attended the teleconference hearing and gave affirmed testimony, was provided the opportunity to present his evidence orally and in documentary form prior to the hearing, and make submissions during the hearing. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on August 12, 2015. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address for the landlord provided by the landlord which is supported by an e-mail from the landlord dated Wednesday, June 3, 2015 that supports that the landlord was also residing in the home where the rental unit was located.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. According to the online registered mail tracking information, the landlord refused the registered mail package on August 17, 2015. Based on the above, I find the landlord was deemed duly served on the fifth day after mailing on August 17, 2015, in accordance with the *Act*. I note that August 17, 2015 is also the date the landlord refused the registered mail package and that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute grounds for an Application for Review Consideration under the *Act*.

Issue to be Decided

- Did the landlord breach section 38 of the *Act* resulting in the tenant being entitled to double the amount of the security deposit?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenant testified that he paid a security deposit of \$325 in March of 2015 before the tenancy began on May 1, 2015. The tenant stated that he vacated the rental unit on June 4, 2015. The tenant submitted a registered mail tracking number in evidence which supports that the tenant provided his written forwarding address to the landlord by registered mail on July 23, 2015 and that the landlord also refused that registered mail package. The deemed service date of the written forwarding address was July 28, 2015. A copy of the written forwarding address was submitted in evidence.

The testimony of the tenant was that the landlord did not perform either incoming or outgoing condition inspection. The tenant denied that he signed over any portion of the security deposit and is seeking the return of double his security deposit under the *Act* as the landlord has not responded to him and has refused to accept registered mail packages from him.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*. There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit, which has accrued no interest to date.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit. I find the landlord is deemed served with the written forwarding address as of July 28, 2015, which is five days after July 23, 2015, the day the tenant mailed the written forwarding address to the landlord, a copy of which was submitted in evidence.

By failing to perform incoming or outgoing condition inspection reports, I find the landlord has extinguished his right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or the written agreement of the tenant. In the matter

before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security to the tenant within 15 days of July 28, 2015 in accordance with the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. Therefore, I find the landlord owes the tenant **\$650.00**, which is double the original \$325.00 security deposit.

As the tenant's application has merit, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$50.00** pursuant to section 72 of the *Act*.

I find the tenant has established a total monetary claim of **\$700.00** comprised of \$650.00 for the doubled security deposit, plus the recovery of the \$50.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$700.00.

Conclusion

The tenant's application is successful.

The tenant has established a total monetary claim of \$700.00 comprised of \$650.00 for the doubled security deposit, plus the recovery of the \$50.00 filing fee. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$700.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: December 18, 2015

Residential Tenancy Branch

