



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The tenant applies for the return of a security deposit, doubled pursuant to the provisions of s. 38 of the *Residential Tenancy Act* (the “RTA”) and to recover a fee promised by the landlord for early possession of a portion of the rental unit.

The landlord did not attend the hearing within ten minutes after its scheduled start time and the matter proceeded in his absence.

Issue(s) to be Decided

Has the landlord been served? If so, does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to recover a doubled security deposit or the fee she claims?

Background and Evidence

The rental unit is a five bedroom half of a duplex, with basement. The tenancy of the upper portion of the unit began in 2001. The tenant began renting the full rental unit in 2007.

The landlord purchased the property, subject to the tenancy, in June 2015.

The tenancy ended August 31, 2015. The monthly rent had been \$1475.00. The landlord assumed the obligation of a \$300.00 security deposit paid by the tenant to her original landlord on January 31, 2015.

The tenant testifies that she provided the landlord with her forwarding address in writing on August 25, 2015. The landlord did not conduct a move-out inspection.

The landlord has not applied to keep any portion of the security deposit.

The tenant testifies that the landlord re-rented the basement portion of the rental unit and negotiated with her to pay her \$75.00 to permit the new tenants to move in a few days early.

The tenant testifies that she served the landlord with this application and notice of hearing by registered mail to his residential address nearby. Canada Post records show that the mail, sent September 21, 2015 was “unclaimed by recipient” and returned to the tenant.

Analysis

Section 89 of the *RTA* permits service of an application by registered mail on a landlord. Section 90 provides that he is deemed to have received it five days later.

I find that the landlord has been duly served.

Section 38 of the *RTA* provides that once a tenancy has ended and once a landlord has received the tenant’s forwarding address in writing, he is obliged to either repay a security deposit or make an application to keep any or all of it. He must do one or other within 15 days and if he doesn’t he is penalized by having to account to the tenant for double the amount of the deposit.

I find that the landlord has failed to comply with s. 38 and must account to the tenant for double the amount of the deposit: \$600.00.

On the tenant’s uncontradicted evidence I find that the landlord agreed to pay her \$75.00 for early possession by incoming tenants and that he has not paid her. I award her \$750.00 as claimed.

Conclusion

The tenant's application is allowed. She is entitled to the double deposit amount of \$600.00, plus interest of \$118.19 on the deposit money since it was paid (in accordance with the *RTA* and the regulation setting the annual interest rate to be paid on deposit money), plus the \$75.00 fee, plus recovery of the \$50.00 filing fee for this application.

There will be a monetary order against the landlord in the total amount of \$843.19.

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: January 19, 2016

Residential Tenancy Branch

