



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

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

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the notice of hearing package and the submitted documentary evidence. The tenant confirmed receipt of the landlord's submitted documentary evidence. I find based upon the affirmed testimony of both parties that each party has been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

At the outset of the hearing it was clarified with both parties that a settlement was reached in a previous file dated July 17, 2015 in which both parties would be bound by those conditions regarding the return of the \$600.00 security deposit. Condition 7 of the settlement agreement states,

The landlord agreed that if the condition of the rental unit on the day of the inspection was satisfactory, the landlord would return \$600.00 of the deposits that day by cheque.

As such this hearing shall only deal with the return of the \$600.00 security deposit at the end of tenancy.

During the hearing the landlord stated that she had only received the tenant's notice of hearing package and the submitted documentary evidence through Canada Post Regular Mail. The tenant disputed this stating that the original notice of hearing package was sent to the landlord via Canada Post Registered Mail on September 18,

2015 and has submitted the Canada Post Customer Receipt Tracking number and the returned envelope. The tenant stated that the package was returned as "unclaimed" by the landlord. The tenant confirmed that she later sent another copy to the landlord by Canada Post Regular Mail, which was confirmed received by the landlord during the hearing. Pursuant to section 88 and 89 of the Act I find that the landlord was properly served with the notice of hearing package by Canada Post Registered Mail. Although the landlord failed to claim the package, the landlord is deemed to have received it 5 days later on September 23, 2015 as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of double the \$600.00 security deposit?

Background and Evidence

Both parties confirmed in their direct testimony that this tenancy ended on August 1, 2015 as a result of a settlement agreement from a previous dispute resolution hearing. Both parties agreed that at the end of the tenancy agreement the landlord held the \$600.00 security deposit. Both parties confirmed that the landlord did not have permission from the Residential Tenancy Branch nor the tenant to retain the security deposit.

The tenant stated that the landlord was provided her forwarding address in writing in a letter dated August 24, 2015 which was posted to the landlord's door. The landlord disputes this stating that the tenant's forwarding address was not received until she was served with the tenant's notice of hearing package through Canada Post Regular Mail approximately two weeks prior to the hearing date. The tenant has submitted a copy of the letter dated August 24, 2015 in which the tenant's forwarding address in writing was provided for the return of the security deposit. The tenants stated that the landlord refused to open the door. The tenant stated that this notice was witnessed by N.C. as being delivered in this manner, but has not called N.C. as a witness to confirm this.

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. However, this provision does not apply if the landlord has obtained the tenant's written

authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

Although the tenant provided a signed letter, witnessed as being delivered to the landlord by posting it to the rental unit door on August 24, 2015, I find that this is rebuttal material that is unconfirmed by the tenant's witness. The landlord has disputed this claim that the forwarding address in writing was not received until the landlord received the tenant's application for dispute. I find that the tenants have failed to provide sufficient evidence to satisfy me that the landlord was properly served with their forwarding address in writing on August 24, 2015. The tenants did not provide the landlord with written notice of her forwarding address: she is thus not entitled to recover twice the security deposit amount.

The tenant has established a monetary claim for \$600.00 for the return of the security deposit as outlined in the settlement agreement. The tenant is granted a monetary order for \$600.00.

Conclusion

The tenant is granted a monetary order for \$600.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: February 9, 2016

Residential Tenancy Branch

