



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Protection Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit and recovery of their filing fee. The tenant SC appeared on behalf of both tenants and JZ appeared on behalf of the corporate respondent (a property management company). SN, the owner of the property, did not participate in the conference call hearing.

The tenant testified that she served the application for dispute resolution, notice of hearing and evidence on both SN and the corporate respondent at the company's place of business. JZ acknowledged that he had received SN's copy of these documents and although his company was no longer acting on behalf of SN, he emailed the documents to SN and received a response from him acknowledging receipt.

Section 71(2)(b) of the Act permits me to find that documents have been sufficiently served for the purpose of the Act. Because SN acknowledged to JZ that he had received the documents sent via email, I found that SN had knowledge of the claim against him and notice of the hearing. The hearing proceeded in SN's absence.

As a preliminary issue, JZ argued that he was not properly named as a respondent. He testified that while he acted as an agent for the landlord throughout the tenancy, he had given the landlord the security deposit and the agency relationship had ended on the last day of the tenancy when JZ sent the landlord the tenant's forwarding address.

I determined that JZ was properly named as a respondent. The Act defines landlord very broadly and the definition includes an agent. Because JZ's property management company was acting as the landlord's agent throughout the tenancy and did not end until the tenancy ended, I found that the company fell under the definition of landlord.

Issue(s) to be Decided

Are the tenants entitled to the return of double their security and pet deposits?

Background and Evidence

The facts are not in dispute. The tenancy began on May 1, 2014 at which time the tenants paid security and pet deposits totaling \$1,950.00. The tenancy ended on or about July 31, 2015 at which time the property management company performed a condition inspection of the unit with the tenants and the tenants provided to the company their forwarding address in writing on the condition inspection report. The landlord has not returned the deposits to the tenants.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit.

Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenants paid a \$975.00 security deposit and a \$975.00 pet deposit in May 2014 and vacated the rental unit on or about July 31, 2015 and that the landlord received the forwarding address in writing on or about July 31, 2015. I find that the landlord failed to comply with section 38(1) and is now liable to pay the tenants double the security deposit and pet deposits. I therefore award the tenant \$3,900.00. As the tenants have been successful in this claim, I find they should recover the filing fee paid to bring their application and I award them \$50.00.

I grant the tenants a monetary order under section 67 for \$3,950.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order under section 67 for \$3,950.00 which represents double their security and pet deposits and the \$50.00 filing fee paid to bring their application.

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: March 11, 2016

Residential Tenancy Branch

