



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order for the return of the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the respondents by mailing, by registered mail to where the respondent carries on business.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The two corporate respondents are licenced real estate agents. The tenants and the two corporate respondents entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2014, end on November 1, 2015 and become month to month after that. The rent was \$2198 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$1099 on October 25, 2014. That sum was paid directly to DH and not the corporate respondents.

The tenancy ended on October 31, 2015.

The tenant(s) provided the landlords with his/her their forwarding address in writing on November 23, 2015 by providing that notice to the representative of the two corporate respondents. .

Preliminary Matter:

The representative of the two corporate respondent testified that he forwarded copies of the Application for Dispute Resolution to the owner DH upon receipt. However, it was returned to him unclaimed. He also advised DH by e-mail of the tenant's application and of the tenants' right to claim for double the security deposit. DH failed to contact the representative of the two corporate respondents. The representative of the two corporate respondents does not know his whereabouts of DH. The rental property is up for sale. He approached the selling agent to try to get the address of DH but was refused for privacy reasons.

The corporate respondents are identified as the landlord in the tenancy agreement although the security deposit was paid directly to DH. The applicants testified they were never given an address for DH.

The definition of landlord in the Residential Tenancy Act provides as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this;

I determined that the Application for Dispute Resolution has correctly identified all three respondents as all fit the definition of landlord in the Residential Tenancy Act. Further, I determined the tenants have sufficiently served all three respondents as I determined that at all material times the two corporate respondents were acting as agents for DH..

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$1099 on October 23, 2014. I determined the tenancy ended on October 31, 2015. I further determined the tenants provided the landlord(s) with their forwarding address in writing on November 23, 2015. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing.

Policy Guideline 17 includes the following:

“3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit¹⁵: As a result I determined the tenants have established a claim against the landlord for double the security deposit.”

It would have been preferable for the tenants to identify in their Application for Dispute Resolution that they were seeking double the deposit. However, in this case the representative for the two corporate respondents was fully aware of this provision. The individual respondent DH was advised by the representative of the corporate respondent (his agent) of this obligation. The tenants stated at the hearing they do not wish to waive their right for the doubling of the security deposit. On the facts of this case I determined the Tenants are entitled to such an order as all respondents were aware of the tenants' right to seek a doubling of the security deposit at the hearing.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant(s) the sum of \$2198 plus the sum of \$50 in respect of the filing fee for a total of \$2248.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: March 31, 2016

Residential Tenancy Branch

