



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. The landlord did not appear at the hearing. The tenant submitted that the hearing package was sent to the landlord via registered mail at the landlord's address of residence on September 18, 2015. The registered mail was returned as unclaimed. The tenant provided a copy of the registered mail receipt, including tracking number, and the registered mail envelope that was returned to him as proof of service.

I noted that the landlord's service address on the tenancy agreement was different than the landlord's mailing address that appears on the application. The tenant explained that after the tenancy started the landlord moved and gave the tenant his new address. Further, near the end of the tenancy the tenant confirmed with the landlord that the landlord still resided at that address.

Section 90 of the Act deems a party to have received documents five days after mailing, even if the recipient refuses to accept or pick up their mail.

Based upon the evidence before me, I was satisfied that the tenant sent the hearing package to the landlord in a manner that complies with the Act on September 18, 2015 and the landlord is deemed to have received the hearing package five days later under section 90 of the Act. Therefore, I continued to hear from the tenant without the landlord present.

Two co-tenants were identified on this application; however, I noted that the written tenancy agreement was signed by the male applicant but not by the female applicant. Both applicants were present at the hearing and with consent I amended the application to exclude the name of the female applicant.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The one year fixed term tenancy commenced December 15, 2010 and continued on a month to month basis after the expiration of the fixed term. The tenant paid a security deposit of \$550.00 and was required to pay rent of \$1,100.00 on the first day of every month. A move-in inspection was done together with the landlord; however, the landlord did not prepare a move-in inspection report. The tenant gave a written notice to end tenancy to the landlord on July 31, 2015 by hand delivering the notice to the landlord at the landlord's place of work. The tenant's notice to end tenancy also included the tenant's forwarding address. The tenancy ended on August 31, 2015.

The tenant submitted that the parties arranged to meet at the property on September 12, 2015 to do the move-out inspection together. The tenant went to the property but the landlord failed to show up.

The tenant seeks return of double the security deposit. The tenant testified that he did not authorize the landlord to make any deductions from the security deposit in writing. The landlord has not filed an Application for Dispute Resolution seeking authorization to retain the security deposit and has not refunded the security deposit to the tenant.

Analysis

Unless a landlord has a legal right under the Act to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenant extinguished his right to return of the security deposit. I also accept, in the absence of any evidence to the contrary, that the tenant did not authorize the landlord to retain the security deposit in writing.

Based upon the undisputed evidence before me, I am satisfied the landlord was provided with the tenant's forwarding address in writing on July 31, 2015 when the tenant delivered his notice to end tenancy to the landlord. Since the tenancy ended on August 31, 2015 and the landlord was in receipt of the tenant's forwarding address, the landlord was required to either refund the security deposit to the tenant or file an Application for Dispute Resolution to seek authorization to retain it by September 15, 2015 in order to comply with section 38(1) of the Act. Since the landlord did not, I find the landlord violated section 38(1) and must now pay the tenant double the security deposit pursuant to section 38(6). Therefore, I grant the tenant's request for return of double the security deposit.

I further award the tenant recovery of the \$50.00 filing fee paid for this application.

In light of the above, I provide the tenant with a Monetary Order in the total amount of \$1,150.00 to serve and enforce upon the landlord. .

Conclusion

The tenant has been awarded return of double the security deposit plus recovery of the filing fee. The tenant has been provided a Monetary Order in the sum of \$1,150.00 to serve and enforce against the landlord.

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 29, 2016

Residential Tenancy Branch