



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit and pet damage deposit. The tenant appeared at the hearing but the landlords did not.

The tenant provided two registered mail receipts, including tracking numbers, as proof the hearing packages, including evidence, were sent to each landlord on October 16, 2015. The registered mail was returned as unclaimed. Where a tenant sends mail to the landlord the tenant is to use the landlord's address at which the landlord carries on business as a landlord. The tenant testified that the landlords provided him with an address at which to send his rent cheques. The tenant testified that he sent rent cheques to the landlords on two occasions, via regular mail, and the landlords received them at that address as his rent cheques were cashed. The tenant affirmed that he used the same address to send the hearing packages to the landlords. Accordingly, I was satisfied that the tenant used an address at which the landlords carried on business as landlords to send the hearing packages. Under section 90 of the Act, a person is deemed to have received documents five days after mailing, even if the person refuses to accept or pick up their mail. I deemed the landlords served with the hearing packages and evidence five days after mailing pursuant to section 90 of the Act. In light of the above, I proceeded to hear from the tenant without the landlords present.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit and pet damage deposit?

Background and Evidence

The tenant paid a security deposit and pet damage deposit in the sum of \$1,300.00 by way of a cheque dated December 29, 2014. Although the tenant signed a written tenancy agreement the landlords did not provide the tenant with a copy of the agreement. The tenancy commenced on January 1, 2015 and ended June 30, 2015.

The monthly rent of \$1,300.00 was paid by way of cheques dated for the first day of every month. The tenant provided copies of the cheque for the security deposit and pet damage deposit cheque as well as the rent cheques along with proof the cheques cleared his bank account.

I heard that the landlords did not schedule or conduct a move-in or move-out inspection with the tenant.

The tenant sent written notice to end the tenancy to the landlords via registered mail on May 15, 2015 using the same address he sent his rent cheques to. The tenant's notice provides that the tenant would be ending the tenancy on June 30, 2015; however, the registered mail was returned as unclaimed. The tenant provided a copy of his notice to end tenancy and the registered mail envelope that was returned to him.

On July 6, 2015 the tenant sent his forwarding address to the landlords via registered mail. The registered mail was sent to the same address that he used to send his rent cheques but it was returned as unclaimed. The tenant provided a copy of the letter providing for the forwarding address and the registered mail envelope that was returned to him.

The tenant testified that he did not authorize the landlords to retain his security deposit or pet damage deposit. The landlords did not file an Application for Dispute Resolution to make a claim against the deposits. The landlords have not yet refunded the deposits to the tenant.

Analysis

Unless a landlord has a legal right under the Act to retain the security deposit or pet damage deposit, section 38(1) of the Act provides that a landlord must either return the security deposit and/or pet damage 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 or pet damage deposit; nor, did the tenant authorize the landlords to retain the deposits in writing.

Based upon the evidence before me, I find the tenancy ended June 30, 2015 and I deem the landlords to be in receipt of the tenant's forwarding address five days after he mailed his forwarding address to them on July 6, 2015. Therefore, I find the landlords were obligated to comply with section 38(1) of the Act by either refunding the entire security deposit and pet damage deposit to the tenant or filing an Application for Dispute Resolution to claim against the deposits no later than July 26, 2015. Since the landlords did neither I find the landlords must now pay the tenant double the security deposit and pet damage deposit pursuant to section 38(6) of the Act.

In light of the above, I award the tenant \$2,600.00 (calculated as \$1,300.00 x 2) plus recovery of the \$50.00 filing fee he paid for this application. The tenant is provided a Monetary Order in the sum of \$2,650.00 to serve and enforce upon the landlords.

Conclusion

The tenant has been provided a Monetary Order in the sum of \$2,650.00 to serve and enforce against the landlords for return of double the security deposit and pet damage deposit and recovery of the filing fee.

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: April 14, 2016

Residential Tenancy Branch