



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OPAL BUILDING SYSTEMS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on December 7, 2015 for the return of double the security deposit, and to recover the filing fee.

One of the Tenants appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlord during the 20 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenants.

The Tenant testified that on December 9, 2015 he served the company Landlord with a copy of the Application and the Notice of Hearing documents to the address on their company website. The Tenant testified that he used this address because when he had previously sent the Landlord his forwarding address to the Landlord which was different at the time, Canada Post had re-directed that mail to the same address as that which appears on the company website. Therefore, he sent the documents for this hearing to the website address. However, the documents were returned to him.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. Based on the undisputed evidence of the Tenants, I find they completed the service requirements of Section 89(1) of the Act and the Landlord is deemed served with the required documents on December 14, 2015 pursuant to the Act.

Issue(s) to be Decided

Are the Tenants entitled to the return of double their security deposit?

Background and Evidence

The Tenant testified that this tenancy started on July 1, 2013. A written tenancy agreement was completed for a fixed term of one year which then continued on a month to month basis. The Tenants were required to pay rent of \$950.00 on the first day of each month. The Tenants paid the Landlord a security deposit of \$475.00 at the start of the tenancy, which the Landlord still retains.

The Tenant testified that the tenancy ended on July 31, 2015. After this time, the Tenants provided the Landlord with their forwarding address by email. However, due to the lack of response, the Tenants then sent a letter dated October 22, 2016 which detailed the same forwarding address.

The Tenant testified that he sent this by registered mail on November 10, 2015 to the Landlord's address where he used to pay rent to. The Tenant provided the Canada Post tracking number and history report which indicates that the letter was redirected to a different address and it was received and signed for on November 13, 2016. The Tenants provided a copy of the written letter which documents their forwarding address.

The Tenant testified that he did receive an email from the Landlord which detailed a list of damages that the Tenants had allegedly caused during the tenancy which the Tenant disputed. The Tenant confirmed that they did not provide any written notice to the Landlord to keep the security deposit. Therefore, the Tenants now seek to claim double the amount back of \$950.00.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on July 31, 2015 and that the Landlord was served on November 13, 2015 with the Tenants' forwarding address in writing. Therefore, the Landlord would have had until November 28, 2015 to deal properly with the Tenants' security deposit pursuant to the Act.

There is no evidence before me the Landlord made an Application within 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenants to keep it. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenants by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act. It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant. Here the Landlord did not have any authority under the Act to keep the Tenants' security deposit.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenants are entitled to double the return of their security deposit in the amount of \$950.00. As the Tenants have been successful in their Application, I also grant them their filing fee of \$50.00 pursuant to Section 72(1) of the Act. As a result, the Tenants are issued with a Monetary Order for a total amount of \$1,000.00. This order must be served on the Landlord and may be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. Copies of the order are attached to the Tenants' copy of this decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenants' security deposit. Therefore, the Tenants are granted a Monetary Order of \$1,000.00 for double the amount including their 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 Act.

Dated: July 04, 2016

Residential Tenancy Branch