



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnmsd, ff

Introduction

The tenants apply for the return of their security deposit, doubled.

The tenants and their lawyer attended the hearing. The landlord did not attend. I accept that the landlord was properly served notice of this hearing and the tenants' evidence package all by way of registered mail, and note that this package was signed for on April 7, 2016. This satisfied the service requirements of section 88 of the Residential Tenancy Act.

Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit, doubled?

Background and Evidence

This tenancy began April 15, 2015 and ended by way of mutual agreement March 15, 2016. The tenants paid a security deposit at the start of the tenancy of \$1,100.00, none of which has been returned. No condition inspection was performed at the start or the end of the tenancy. At the end of the tenancy, the landlord's counsel advised tenant's counsel that the landlord had elected not to perform a move out inspection. The landlord was provided with the tenants' forwarding address on March 15, 2016, by way of an email provided to the landlord's counsel of the time. Receipt of the forwarding address was acknowledged that same day by return email from landlord's counsel. No claim as against the security deposit was filed by the landlord. 26 days after the tenant's claim was filed, the tenants received payment of the \$1,100.00 deposit.

Analysis

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

There is no evidence before me that any of the exceptions to the landlord's obligations under section 38(1) apply in this case. There is no evidence that any statutory grounds extinguish the tenants' right to claim the deposit. On the other hand, as a result of not having completed inspections at either the start or end of the tenancy, the landlord's right to retain the tenant's deposit was extinguished pursuant to section 36(2) of the Residential Tenancy Act.

I accept that the forwarding email was provided electronically by e-mail, and as this was a mutual means of written communication between counsel to the parties, I accept that this fulfilled the requirement to provide the written address in writing. I find under these circumstances the tenants are entitled to recover their deposit, doubled, from the landlord.

The original deposit has been recovered, but the landlord must pay another \$1,100.00 to the tenants, representing the doubling of the deposit. The tenants are also awarded recovery of their filing fee of \$100.00.

Conclusion

A monetary order in the amount of \$1,200.00, payable by the landlord to the tenants is issued.

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: August 19, 2016

Residential Tenancy Branch

