



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 January 12, 2016 for the return of double the security deposit and to recover the filing fee from the Landlord.

One of the Tenants appeared for the hearing and provided affirmed testimony as well as documentary evidence and written submissions prior to the hearing. There was no appearance for the Landlord during the 16 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 they served the Landlord with a copy of the Application and the Notice of Hearing documents to the rental unit address on January 15, 2016. The Tenants provided a copy of the Canada Post tracking number into evidence to verify this method of service. The Canada Post website indicates that the Landlord signed and received these documents on January 18, 2016. Based on the undisputed evidence of the Tenants, I find the Landlord was served with the required documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The hearing continued to hear the undisputed evidence of the Tenants.

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 September 1, 2015 on a month to month basis. A tenancy agreement was signed which required the Tenants to pay rent of \$600.00 on the first day of each month. The Tenant testified that she provided the Landlord with a security deposit of \$300.00 by email transfer on August 31, 2015. The Tenant testified that they ended the tenancy with written notice and vacated the rental unit on November 30, 2015. The Tenant explained that the Landlord did not

complete a move-out condition inspection of the rental unit and did not appear on the last day of the tenancy to collect the keys. As a result, the Tenants handed the upstairs renter the keys to the rental unit along with a letter detailing their forwarding address in writing for the return of the security deposit. The Tenant testified that she asked the renter to pass on the keys to the rental unit and the letter to the Landlord.

The Tenant testified that the Landlord must have received the letter requesting the return of their security deposit because she received a text message from the Landlord and an agent of the Landlord who both asked the Tenant to compromise with the Landlord in relation to the return of the security deposit because there were alleged damages to the rental unit. The Tenants disagreed with the Landlord's text messages and did not authorise in writing any deduction from her security deposit or allow the Landlord to withhold it. As a result, the Tenants now seek to claim double the amount back pursuant to the provisions of the Act.

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 was ended by the Tenants on November 30, 2015. I am also satisfied by the Tenant's undisputed oral evidence that the Landlord was served with the Tenants' forwarding address in writing which was passed on by the upstairs renter of the rental property to the Landlord. I base this finding on the Tenant's evidence on the balance of probabilities that the Landlord made contact with her by text message and attempted to deal with the Tenants' security deposit by mutual consent without luck. Had the Landlord not received the Tenants' key or forwarding address, then it would have been likely the Landlord would have mentioned this in her text message communication with the Tenant. Therefore, the Landlord would have been required to deal with the Tenants' security deposit pursuant to the provisions of 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 was in a tenancy agreement with the Tenants and therefore had 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 that 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 \$600.00.

As the Tenants have been successful in their Application, I also grant them their filing fee of \$100.00 pursuant to Section 72(1) of the Act. As a result, the Tenants are issued with a Monetary Order for a total amount of \$700.00. This order must be served on the Landlord. The Tenants may then file and enforce the order in the Small Claims Division of the Provincial Court as an order of that court if payment is not made. 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. The Tenants are granted a Monetary Order of \$700.00 for double the amount including their filing fee.

his 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: August 23, 2016

Residential Tenancy Branch