



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on January 26, 2016 for the return of their security and pet damage deposits. One of the Tenants appeared for the hearing and provided affirmed testimony as well as some documentary evidence prior to the hearing. However, there was no appearance for the company 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 the Landlord was served with a copy of the Application and the Notice of Hearing documents by registered mail pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The Tenant testified that the documents were sent on January 26, 2016 to the Landlord’s address detailed on the tenancy agreement. The Tenant testified that the Canada Post website indicated that the Landlord had received and signed for the documents but could not recall the exact date this happened.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. Therefore, based on the undisputed oral evidence of the Tenant, I find the Landlord was deemed served with the required documents on January 31, 2016 pursuant to the Act. The hearing continued with the Tenant’s undisputed evidence.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The Tenant testified that this tenancy started on May 1, 2015 for a fixed term of one year. However, the tenancy ended when the Tenant moved out of the rental unit on August 21, 2015. The Tenant testified that the signed tenancy agreement shows that

rent was payable in the amount of \$4,150.00 on the first day of each month. The Tenants paid the Landlord a security deposit of \$2,070.00 and a pet damage deposit of \$2,070.00 on April 27, 2015. The pet damage and security deposit are herein referred to in this Decision as the "Deposits".

The Tenant testified that after the tenancy ended she provided the Landlord with her forwarding address in a letter. The letter was sent to the Landlord's service address as it appeared on the signed tenancy agreement by registered mail on January 7, 2016. The Tenant provided the Canada Post tracking number into evidence to verify this method of service. This is detailed on the front page of this decision. The Canada Post website shows that the documents were received and signed for on January 8, 2016.

The Tenant confirmed that she had not given the Landlord written consent to withhold or make any deductions from the Deposits. Therefore, the Tenants now seek to recover double the amount back from the Landlord pursuant to the provisions of the Act.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's Deposits. 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 August 21, 2015. I also accept the Tenant's oral evidence that the Landlord was provided with a forwarding address on January 7, 2016 in the form of a letter sent by registered mail which was received by the Landlord on January 8, 2016. Therefore, the Landlord would have had until January 23, 2016 to deal properly with the Tenants' Deposits pursuant to the Act.

There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenants to withhold it. Therefore, I 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 Deposits were 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 Deposits or to deductions to be made from them, the landlord must file an Application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that a landlord feels they are entitled to keep the Deposits, based on unproven claims. A landlord may only keep Deposits through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant.

Here the Landlord did not have any authority under the Act to keep any portion of the Deposits. Therefore, I find that the Landlord would not have been entitled to retain any portion of the Deposits. 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 now entitled to double the return of the Deposits in the amount of \$8,280.00 claimed.

Pursuant to my authority under Section 72(1) of the Act, I also grant the Tenants recovery of their \$100.00 filing fee for having to make this Application. Therefore, the Tenants are issued with a Monetary Order for a total of \$8,380.00. 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 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' Deposits. Therefore, the Tenants are awarded double the amount of \$8,380.00 inclusive 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 Act.

Dated: September 12, 2016

Residential Tenancy Branch