



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for monetary order for the return of double their security deposit under the *Act*.

Tenant C.L. (the "tenant") attended the teleconference hearing and indicated that she was representing both tenants. The tenant gave affirmed testimony, was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on February 11, 2016. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address provided by the landlord. The registered mail tracking number has been included on the cover page of this Decision for ease of reference. According to the online registered mail tracking website, the registered mail package was marked as "refused by recipient". Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. As a result, I find the landlord was deemed served as of February 16, 2016 which is five days after the registered mail package was mailed. Furthermore, I note that refusal or neglect on the part of the landlord to pick up registered mail does not constitute a ground for a Review Consideration.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

The tenant stated that they entered into a verbal tenancy agreement with the landlord. The tenant testified that they paid a security deposit of \$450.00 in September 2015. According to the tenant, a month to month tenancy began on September 21, 2015 and ended on December 31, 2015 when the tenants vacated the rental unit.

According to the tenant's undisputed testimony the copy of an e-transfer document submitted in evidence supports that the landlord's daughter accepted \$450.00 as a security deposit from the tenants.

The tenants submitted a copy of their written forwarding address dated December 27, 2015 which the tenant stated was served by registered mail on January 4, 2016. A second registered mail tracking number was submitted in evidence which has been included on the cover page of this Decision for ease of reference. According to the online registered mail tracking website, the written forwarding address was signed for and accepted by the landlord on January 16, 2016.

The tenants have not received their security deposit from the landlord and confirmed that they have not given permission to the landlord to retain any portion of their security deposit in writing.

Analysis

Based on the above, the undisputed documentary evidence and undisputed testimony of the tenant, and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

As the landlord was served with the tenants' Application, the Notice of Hearing and documentary evidence, and did not attend the hearing, I find that the landlord is unopposed to the tenants' Application.

There was no evidence before me to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit, which has accrued no interest to date. There was also no evidence to show that the landlord had applied for dispute resolution to claim towards the security deposit within 15 days of the end of the tenancy or the January 16, 2016 receipt date of the tenants' written forwarding address.

A security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenants within 15 days of January 16, 2016 as required by the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue. Based on the above, I find the tenants are entitled to double the amount of their \$450.00 security deposit for a total of **\$900.00** due to the landlord breaching section 38 of the *Act* by failing to return the tenants' security deposit as required by the *Act*.

As the tenants' Application is successful, I grant the tenants **\$100.00** for the recovery of the cost of the filing fee.

Therefore, I find the tenants have established a total monetary claim of **\$1,000.00** as described above. Accordingly, I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$1,000.00.

I caution the landlord to comply with section 38 of the *Act* in the future.

I caution the landlord to also comply with section 12 of the *Act* in the future which requires that all tenancy agreements be in writing.

Conclusion

The tenants' Application is fully successful.

The tenants are granted a monetary order in the amount of \$1,000.00. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 3, 2016

Residential Tenancy Branch