



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of the security deposit. The landlord did not appear at the hearing. The tenant testified that he sent the hearing documents to the landlord on June 9, 2016 at the landlord's service address as it appears on the tenancy agreement. The tenant provided a registered mail tracking number as proof of service and a search of the tracking number showed that the documents were received on June 16, 2016. I was satisfied that the tenant served the landlord in a manner that complies with the Act and I continued to hear from the tenant without the landlord present.

The tenant requested that he be awarded double the security deposit if he is so entitled under the Act. I amended the application accordingly.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started August 15, 2012 and ended April 30, 2016. The tenant paid a security deposit of \$800.00 and was required to pay rent of \$1,550.00 on the first day of every month. The tenant provided a copy of the tenancy agreement.

The tenant testified that the landlord did not prepare a move-in or move-out inspection report.

The tenant testified that he met the landlord at the rental unit on April 30, 2016 to do the move-out inspection and return the keys to the landlord.

The tenant testified that he did not authorize the landlord to retain any part of his security deposit in writing.

On May 13, 2016 the tenant wrote a letter to the landlord, providing him with his forwarding address, and sent it to the landlord via registered mail. The tenant provided a copy of the letter, the registered mail receipt, and a print out from Canada Post showing the registered mail was received on May 17, 2016.

The landlord has not refunded the security deposit and did not file an Application for Dispute Resolution to claim against it.

Analysis

Unless a landlord has a legal right to retain the security deposit, section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, I was not provided any information to suggest the tenant extinguished his right to return of the security deposit; nor, did the tenant authorize the landlord to retain it in writing. Rather, it would appear that the landlord extinguished his right to claim against the security deposit for damage for failing to prepare condition inspection reports.

Based upon the evidence before me, I am satisfied the landlord received the tenant's forwarding address in writing on May 17, 2016. Therefore, I find the landlord was obligated to comply with section 38(1) of the Act by either refunding the security deposit to the tenant or filing another Application for Dispute Resolution within 15 days of May 17, 2016 and since the landlord did neither I find the tenant entitled to return of double the security deposit pursuant to section 38(6) of the Act.

I further award the tenant recovery of the \$100.00 filing fee he paid for this Application.

In light of all of the above, I provide the tenant with a Monetary Order in the total amount of \$1,700.00 to serve and enforce upon the landlord.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$1,700.00 to serve and enforce upon the landlord.

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: December 14, 2016

Residential Tenancy Branch