



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by both tenants; their advocate; and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on July 18, 2014 for a 6 month fixed term tenancy beginning on August 1, 2014 for a monthly rent of \$825.00 due on the 1st of each month with a security deposit of \$412.50 paid;
- A copy of a letter dated July 28, 2016 from the tenants to the landlord requesting return of their security deposit;
- A copy of a print out from Canada Post confirming that the landlord signed for the receipt of the tenants' forwarding address letter confirming they mailed the letter on August 4, 2016 and that it was received and signed for by the landlord on August 5, 2016.

The tenants submitted that the tenancy ended on December 31, 2015; that they provided the landlord with their forwarding address by registered mail as noted above; and that they have not yet received the deposit.

The landlord testified that he had not received or signed for any registered mail from the tenants that contained their forwarding address but that he was willing to return the deposit now.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I prefer the tenants' documentary evidence confirming that the landlord signed for the registered mail package on August 5, 2016, the day after the tenants sent it. As such, I find that the landlord received the tenant's forwarding address by August 5, 2016 and had until August 20, 2016 to either return the deposit or file an Application for Dispute Resolution to claim against the deposit. As such, I find that the landlord has failed to comply with the requirements under Section 38(1) and the tenants are entitled to double the amount of the deposit, pursuant to Section 38(6).

I also note that the tenant's submissions confirming service of the hearing documents to the landlord also show that the landlord signed for receipt of the hearing package the day after it was sent by registered mail. From that information I note that the tenants had also provided the landlord with their forwarding address by December 6, 2016.

As a result, even if the landlord had not received the tenants' forwarding address in August 2016 he did receive it on December 6, 2016 and he has not returned it or filed an Application for Dispute Resolution to claim against by December 21, 2016. Under these circumstances the tenants would still be entitled to double the amount of the deposit.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$825.00** comprised of double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: January 19, 2017

