



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 an application by the tenants for a monetary order for return of double the security damage deposit and for the application filing fee.

One of the tenants attended the hearing. She provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form and to make submissions.

The tenant testified that she served the named landlord with the application and notice of hearing by registered mail on January 12, 2017 to the mailing address of the building where she had resided. This is the named landlord's mailing address as indicated on both the tenancy agreement and the move-out condition inspection report.

However, that package was returned as "undeliverable." The tenant then attempted to contact the landlord by telephone and was advised that there was a new landlord or owner in charge. The new landlord or owner gave her a new mailing address for the prior landlord. The tenant then sent the same materials by registered mail on February 11, 2017 to that address.

Section 90 of the Act provides that materials are deemed to have been received five days after mailing. Accordingly, I find that the named landlord was served with the tenants' application materials and notice of hearing on February 16, 2017.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlord?

Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began on August 1, 2015 and ended on August 31, 2016. The tenants paid the landlord a security deposit of \$562.50 at the beginning of the tenancy. A copy of a cheque for this amount from the tenants to the landlord dated August 1, 2015 was also in evidence.

The tenant gave undisputed affirmed testimony that she provided the landlord with written notice of the tenants' forwarding address for return of the security deposit on August 14, 2016, when she filled out other paperwork in anticipation of the move-out, including the elevator booking form.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of s. 38 of the Act.

I accept that the tenants provided their forwarding address to the named landlord on August 14, 2016 and vacated the rental unit on August 31, 2016.

The tenant provided undisputed affirmed testimony that there was no written agreement that the landlord could retain any portion of the security deposit. This was consistent with the move-out condition inspection report in evidence.

There was no evidence to show that the landlord had applied, within 15 days of the end of the tenancy or receipt of the tenants' forwarding address, to retain a portion of the security deposit, as required by s. 38.

The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the tenant by the landlord, who may not keep it without establishing the right to do so or obtaining the tenant's agreement. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

Having made the above findings, I order, pursuant to sections 38 and 67 of the Act, that the landlord pay the tenants the total sum of **\$1,225.00**, comprised of double the security deposit (2 x \$562.50) and the \$100.00 fee for filing this application.

Conclusion

The tenants are given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: February 20, 2017

Residential Tenancy Branch