Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The tenants apply to recover a $485.00 security deposit and a $485.00 pet damage deposit.

Neither landlord attended the hearing within fifteen minutes after its scheduled start time. Neither filed material in opposition to the claim.

The rental unit is a three bedroom basement suite. During the tenancy the upper part of the house was also a rental unit, rented out to others by the same landlords.

The attending tenant Ms. F. testifies that her original landlords sold the property to the respondent business partners in 2015.

She has never been provided with a proper address for either landlord. She has paid rent to one or the other during the tenancy.

Ms. F. says this tenancy ended on October 31, 2016 as the result of a two month Notice to End Tenancy for landlord use of property. She says she was informed that the respondent Ms. M.O. and her husband (who is not the respondent Mr. S.R.) would be moving into the basement suite.

The tenant says she provided the landlords with a forwarding address in writing on October 31, 2016 but they have neither applied against the deposit money nor repaid it.

The tenant served the landlords with the application and notice of hearing by separate registered mailings December 31, 2016 both sent to the rental unit.

Canada Post records show (tracking numbers noted on cover page of this decision) that each mailing went “unclaimed by recipient” and was returned to the tenants.

Based on this evidence I find that the respondent landlord Ms.. M.O. was residing at the premises at the time of mailing, as shown by the two month Notice given to the tenants so that she could move there. I find that she has been duly served in accordance with ss. 89 and 90 of the *Residential Tenancy Act* (the "*Act*").

I find that there is insufficient evidence to show that the respondent Mr. S.R. was living in the basement suite or carrying on business there and that he has not been duly served. The tenant is free to re-apply against the landlord Mr. S.R.

In find that the tenants are entitled to recover their $970.00 of deposit money. The landlords have demonstrated no lawful ground to keep it.

Section 38 of the *Act* provides that where a tenancy has ended and a tenant has provided the landlord with a forwarding address in writing, the landlord must, within fifteen days, either repay the deposit money or make an application to keep it.

The landlords in this case have done neither. Section 38 provided that if the landlord does neither the landlord must account to the tenant for double the amount of the deposit.

In this case the tenants have not requested a doubling of the deposit money in their application.

Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" provides that in such a case, an arbitrator is to award the doubling penalty anyway, unless the tenant specifically declines it at the hearing.

The question was put to the attending tenant Ms. A.F. and she declined to decline the doubling penalty. In result the tenants are entitled to recover twice the deposit amount, a sum of $1940.00. They are also entitled to recover the $100.00 filing fee for this application.

The tenants will have a monetary order against the landlord Ms. M.O. in the sum of $2040.00.

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: February 09, 2017

Residential Tenancy Branch