



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 a tenant's application for return of double the security deposit. The landlords did not appear at the hearing. The tenants testified that the hearing packages were sent to each landlord via registered mail on August 29, 2016 but the registered mail was returned as being unclaimed. The tenants testified that the address used for service is the landlords' service address that appears on the written tenancy agreement. The tenants had submitted copies registered mail receipts, including tracking numbers, and the envelopes that had been returned, as proof of service. Under section 90 of the Act, a person is deemed to have received documents five days after mailing even if the recipient refuses to accept or pick up their mail. I found the landlords to be deemed served with notification of this proceeding and I continued to hear from the tenants without the landlords present.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The tenancy started on September 1, 2015 and the tenants paid a security deposit of \$950.00. The tenants testified that a move-in inspection report was prepared at the start of the tenancy. The tenancy was set to end on June 30, 2016 but the tenants vacated a couple of days early. On June 28, 2016 the tenants met the landlords at the rental unit to do the move-out inspection and returned the keys to the landlords. The tenants also provided a forwarding address to the landlords, in writing, on that date. During the move-out inspection the landlords raised an issue with respect to the condition of the countertops in the rental unit; however, the landlords did not prepare a move-out inspection report and the tenants did not authorize the landlords to make any deductions from their security deposit in writing.

On or about July 15, 2016 the landlord sent a text message to the tenant indicating the landlords would not be returning the security deposit to the tenants and that the landlords were of the position the tenants owed them money for countertop damage.

On August 4, 2016 the tenants sent another written forwarding address to the landlords via registered mail; however, the registered mail was returned to them. The tenants orally provided the registered mail tracking number as proof of service. A search of the tracking number confirmed the details described by the tenants.

The tenants have yet to receive a refund of their security deposit and the landlords did not file a claim against it by filling an Application for Dispute Resolution. The tenants seek return of double their security deposit, plus recovery of the filing fee.

Analysis

Pursuant to section 38(1) of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit. Under section 38(6) of the Act, if the landlord does not comply with section 38(1) the landlord must pay the tenant double the amount of the deposit.

Based upon the unopposed evidence before me, I am satisfied the tenants provided a forwarding address to the landlords, in writing, on June 28, 2016 and the tenants did not authorize the landlord to make any deductions from the security deposit in writing. Nor, did the landlords file an Application for Dispute Resolution to claim against the security deposit. Rather, it would appear that the landlords have extinguished their right to make a claim against the security deposit for damage since they failed to prepare a move-out inspection report with the tenants, as provided under section 36 of the Act. More than 15 days has passed since the tenancy ended and the landlords were provided a forwarding address in writing and in the absence of repaying the deposit; filing a claim against it, or getting the tenants' written authorization for a deduction I find the landlords violated section 38(1) of the Act and must now pay the tenants double the security deposit under section 38(6).

In light of the above, I award the tenants \$1,900.00 plus recovery of the \$100.00 filing fee they paid for this Application for Dispute Resolution for a total award of \$2,000.00. With this decision the tenants are provided a Monetary Order in the sum of \$2,000.00 to serve and enforce upon the landlords.

Conclusion

The tenants have been provided a Monetary Order in the sum of \$2,000.00 to serve and enforce upon the landlords.

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 24, 2017

Residential Tenancy Branch