



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, OLC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the security deposit and for the recovery of the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via courier on August 29, 2016. The tenant provided tracking information. The landlord failed to pick up the package despite repeated notifications. The tenant submitted evidence showing that the package containing the notice of hearing was unclaimed by the landlord and returned to the tenant. As the landlord cannot evade service by neglecting to pick up registered mail, I find the landlord was duly served with the notice to end tenancy.

The landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenancy began on February 01, 2016 for a fixed term of six months. The monthly rent was \$1,575.00. Prior to moving in, the tenant paid a security deposit of \$787.50.

The tenant testified that on June 15, 2016 the parties entered into a mutual agreement to end the tenancy. The tenant moved out on June 30, 2016 and provided the landlord with his forwarding address in writing, on that day. The landlord mailed a cheque dated July 13, 2016 to the tenant for the return of the security deposit in the amount of \$787.50. The tenant testified that he was unable to obtain the funds as the cheque was returned for insufficient funds. The tenant provided a copy of his bank statement to support his testimony regarding the returned cheque.

During the tenancy, the parties communicated mostly by text messaging and the tenant filed copies of text messages between the two parties. The tenant stated that he attempted to contact the landlord by text message for the return of the security deposit but the landlord did not respond to his messages. On August 22, 2016, the tenant filed this application.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of the tenant and in the absence of any contradictory evidence, I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$787.50 and is obligated under section 38 to return double this amount (\$1,575.00). Since the tenant has proven his claim, he is also entitled to the recovery of the filing fee (\$100.00).

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$1,675.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order for **\$1,675.00**.

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 24, 2017

Residential Tenancy Branch

