



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord to comply - Section 62;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords did not attend the hearing. I accept the Tenant’s oral evidence that each Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. It is noted that the Tenant did not provide a postal receipt or tracking number. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

It is noted that the Tenant provided a monetary order worksheet that includes a claim for bank charges: a stop payment charge. Nothing in the application particularizes this claim that only refers to a claim for return of double the security deposit and I note that the application sets out the total claimed amount equivalent to double the security deposit paid and not for any extra monies. Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As the application does not include any reference to a claim for a bank charge or any details that could reasonably infer such a claim, I find that I may not consider this claim and it is dismissed with leave to reapply.

It is also noted that the Decision herein was delivered orally to the Tenant at the end of the Tenant's submissions. The Tenant was not happy and wished to continue to challenge the outcome. The relevant sections of the Act that and the reasons were orally delivered a second time. The Tenant was informed that a Decision would also be sent similarly detailing the findings and outcome and the hearing was ended over the objections of the Tenant.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started in February 2012 and ended on August 15, 2016. Rent of \$1,450.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$725.00 as a security deposit. The Tenant sent its forwarding address by email on August 17, August 30 and September 7, 2016. The Tenant received the return of the full security deposit on September 8, 2016. The Tenant does not know when the Landlord received these emails.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Since the Tenant sent its forwarding address to the Landlord by email, as there is no evidence of when the Tenant's forwarding address was received by the Landlord, and given that the Landlord returned the full security deposit to the Tenant within a day of the last email, I find that the Tenant has not substantiated that the Landlord failed to return the security deposit within the time required. I therefore dismiss the Tenant's claim for return of double the security deposit. As the Tenant has not been successful with its

claim I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: March 14, 2017

Residential Tenancy Branch