



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 1:50 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on September 22, 2016, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail tracking number was provided in support of service. The tenant testified the hearing package was sent to the dispute address. The tenant testified that the landlord did not provide any alternate address for service.

Although the landlord may not reside at this address, I find he is carrying on a business of a rental property at this address. Further, I accept the tenant's testimony and find the landlord failed to provide any alternative address for service. Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on March 15, 2016 with a monthly rent of \$2250.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1125.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant submitted e-mail correspondence dated August 3, 2016 as proof of service of a forwarding address as well as a response to the e-mail from the landlord on August 4, 2016.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Section 88 of the Act sets out how documents may be served. Text and/or e-mail message is not an acceptable method of service pursuant to section 88 of the Act. However, section 71(2)(c) of the Act provides the Director the authority to order that a document is sufficiently given or served for the purposes of the Act, in cases where it has not been served in strict accordance with section 88 of the Act. I accept the tenant's evidence and find the landlord was sufficiently served with a forwarding address by e-mail. I make this finding as the e-mail correspondence submitted by the tenant shows the landlord received and responded to the tenant's request for return of the security deposit.

I find the tenant did provide a forwarding address to the landlord. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$2250.00, which is double the original security deposit of \$1125.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$2350.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2350.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 21, 2017

Residential Tenancy Branch