



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by both tenants.

The tenants testified each landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 20, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The tenants submitted that both landlords work for Canada Post and that despite the packages being returned as unclaimed they had been opened. Based on this undisputed testimony, I find the landlords have deliberately taken action to attempt to avoid service, but that they have received the hearing packages.

Based on the testimony of the tenants, I find that each landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants testified the tenancy began on November 27, 2011 as a month to month tenancy and ended on July 30, 2016. The monthly rent at the end of the tenancy was \$1,200.00 due on the 1st of each month with a security deposit of \$550.00 paid.

The tenants submitted that they provided the landlords with their forwarding address by registered mail that they sent on August 11, 2016. The tenants provided Canada Post tracking information to confirm that this letter was received by the landlords on August 12, 2016. The tenants testified that they have not received any of the deposit.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the tenants' undisputed evidence and testimony I find that the tenancy ended on July 30, 2016 and that the landlords had received the tenants' forwarding address in writing on August 12, 2016. As such, I find the landlords had until August 27 to either return the deposit or file an Application for Dispute Resolution claiming against the deposit.

There is no evidence before me that the landlords have submitted an Application for Dispute Resolution claiming against the deposit. I accept the tenants' undisputed testimony that they have not yet received the deposit back from the landlords. Therefore, I find the landlords have failed to comply with their obligations under Section 38(1) and as a result the tenants are entitled to double the amount of the deposit paid.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,200.00** comprised of \$1,100.00 double the security deposit and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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 22, 2017

Residential Tenancy Branch