



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 (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for return of the security deposit.

Tenant Y.K. appeared at the teleconference hearing and gave affirmed testimony. Tenant Y.K. appeared as agent for Tenant L.Z. and Tenant Y.D. (the "Tenants"). The landlord did not appear during the hearing which lasted 25 minutes. During the hearing Tenant Y.K. was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the tenants' application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

Tenant Y.K. testified that a copy of the tenants' application and Notice of Hearing was sent to the landlord by registered mail on March 2, 2017. Tenant Y.K. testified that the mailing was sent to the landlord's address noted on the signed tenancy agreement. Tenant Y.K. testified that the landlord did not pick up the registered mailing. Tenant Y.K. testified that the landlord picked up a registered mailing sent to the same address on February 4, 2017. The tenants provided the Canada Post tracking information which confirmed the testimony of Tenant Y.K.

Tenant Y.K. provided the Canada Post Customer Receipt with the tracking information to confirm the mailing on March 2, 2017. Taking into account that the tracking information supports the undisputed testimony of Tenant Y.K., and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the tenants' application and Notice of Hearing on March 7, 2017, the fifth day after the registered mailing.

Issue to be Decided

- Are the tenants entitled to a monetary order for return of the security deposit?

Background and Evidence

Tenant L.Z and Tenant Y.D. entered into a one year fixed term tenancy starting January 1, 2015 and ending December 31, 2015. After the fixed term ended, the tenancy continued on a month to month basis. The tenancy ended on November 30, 2016. Rent in the amount of \$1,900 was due on the first day of each month. The tenants provided a security deposit in the amount of \$900.00 on December 5, 2014.

Tenant Y.K. testified that the tenants' forwarding address was sent to the landlord's address by registered mail on January 31, 2017. The tenants submitted a copy of the letter dated December 20, 2016 that was sent by registered mail. The tenants provided a copy of the Canada Post Customer Receipt with the tracking information which indicates that the landlord received the registered mailing on February 4, 2017.

Tenant Y.K. testified that the landlord returned a portion of the security deposit in the amount of \$450.00 on or about December 15, 2016. Tenant Y.K. testified that the tenants did not authorize the landlord to retain any portion of the tenants' security deposit.

The tenants are seeking a monetary order for the return of the balance of their security deposit in the amount of \$450.00.

Analysis

Based on the evidence and testimony of Tenant Y.K., and on the balance of probabilities, I find the following.

As the landlord was served with the tenants' application and Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the landlord. As a result, I find the tenants' application is fully successful as I find the evidence supports the tenants' claim and is reasonable.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to

either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

Pursuant to section 38(6) of the *Act*, if the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit. The landlord must also pay the tenant double the amount of the security deposit with interest payable on the original amount of the security deposit.

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

I find that the tenants paid a security deposit in the amount of \$900.00 on December 5, 2014. I find that the tenancy ended on November 30, 2016. I find that the landlord received the tenants' forwarding address on February 4, 2017, the date the landlord received the tenants' registered mailing. I find that the tenants' forwarding address was given to the landlord in accordance with section 88 of the *Act*.

I find that the landlord returned a portion of the security deposit in the amount of \$450.00 on or about December 15, 2016. I find that the landlord has not obtained the tenants' written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

As the landlord received the tenants' forwarding address after the end of the tenancy, I find that the landlord was required to repay the security deposit or make an application for dispute resolution to claim against the deposit within 15 days of February 4, 2017.

As the landlord only returned a portion of the security deposit, I find that the landlord has not returned the tenants' security deposit in full within 15 days of receiving the tenants' forwarding address on February 4, 2017. I also find that the Residential Tenancy Branch records indicate that the landlord has not applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit.

Although the tenants' have not claimed for return of double the security deposit, I find that the tenants did not specifically waive the doubling of the security deposit in their Application or at the hearing.

In accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit, with interest payable on the original amount of the deposit. No interest is payable over this period.

Based upon the foregoing, I find that the tenants are entitled to a monetary order in the amount of \$1,350.00 as follows:

| Item | Amount |
|--|--------------------|
| Return of Security Deposit | \$ 900.00 |
| Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i> | \$ 900.00 |
| Less Security Deposit Returned | \$ 450.00 |
| Total Monetary Order | \$ 1,350.00 |

Conclusion

The tenants are granted a monetary Order in the amount of \$1,350.00 for double the security deposit. This monetary Order must be served on the landlord as soon as possible. Should the landlord fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 25, 2017

Residential Tenancy Branch