



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$2150.00, and requesting recovery of the \$100.00 filing fee.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on October 28, 2016; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are **deemed served** five days after mailing, and therefore it is my finding that the respondent has been properly served with notice of the hearing, and I conducted the hearing in the respondent's absence.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The applicant testified that he paid a security deposit of \$1075.00 to the respondent on August 26, 2014.

The applicant testified that this tenancy began on September 1, 2014 with a monthly rent of \$2150.00, due on the first of each month.

The applicant further testified that no move-out inspection report was done at the end of the tenancy; however on October 8, 2016 he mailed the landlord a forwarding address in writing.

The applicant further testified that, he has never given the landlord any permission, in writing or otherwise, to keep any or all of his security deposit, and there are no previous orders issued against his security deposit.

The applicant further testified that, to date, the landlord has failed to return any of his security deposit.

The applicant is therefore requesting an order for return of his security deposit double, as required under the Residential Tenancy Act.

Analysis

Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit, and the time limit in which to apply is now well past.

This tenancy ended on September 1, 2016 and a forwarding address was mailed to the landlord on October 8, 2016, and therefore is deemed received five days later. There is no evidence to show that the tenant's right to return of the deposit has been extinguished nor is there any evidence to show that the landlord has a previous order against the security deposit.

Therefore, since the 15 day time frame is now well past, pursuant to section 38 of the Residential Tenancy Act, the landlord must pay double the amount of the security deposit to the tenant.

Having allowed the applicants full claim, I also allow the request for recovery of the \$100.00 filing fee, pursuant to section 72 of the Residential Tenancy Act.

Conclusion

I have issued a monetary order for the respondent to pay \$2250.00 to the applicant.

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: May 08, 2017

Residential Tenancy Branch