



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 a tenant's application for return of her security deposit. The landlord did not appear at the hearing. As proof the tenant sent the hearing documents to the landlord, the tenant provided a copy of the registered mail envelope, including a tracking number, returned to her by Canada Post. The envelope shows the tenant sent the registered mail to the landlord on November 4, 2016 and the registered mail was refused. Section 90 of the Act deems a party to be in receipt of mail five days after mailing, even if the party refuses to accept or pick up their mail. Accordingly, I found the landlord to be deemed served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit?

Background and Evidence

The tenancy commenced on March 15, 2016 and ended on September 30, 2016. The tenant paid a security deposit of \$650.00 at the start of the tenancy. At the end of the tenancy the tenant provided the landlord with her forwarding address in writing. The tenant followed up with the landlord via text message until the landlord stopped responding to her text messages. On October 5, 2016 the tenant wrote the landlord a letter seeking return of her security deposit and providing the landlord with her forwarding address. The tenant sent the letter to the landlord via registered mail on October 6, 2016.

The tenant testified that she did not authorize the landlord to retain or make deductions from the security deposit in writing. Nor, is she aware of any Application for Dispute Resolution the landlord made against her to claim against her deposit.

The tenant testified that the landlord's brother contacted the tenant shortly after sending the letter of October 5, 2016 and she was offered return of one-half of the deposit. She did not agree to accept that offer and nothing has been returned to her.

I informed the tenant that section 38 of the Act provides that a landlord must pay a tenant double the security deposit where the landlord fails to administer the security deposit in accordance with section 38(1) and that it would appear she is entitled to doubling of the security deposit unless she waives any such entitlement. The tenant expressly stated twice that she does not want the security deposit doubled and only wants the security deposit, in the single amount, returned to her, plus recovery of the filing fee she paid.

As documentary evidence, the tenant provided copies of: the tenancy agreement; the letter providing her forwarding address dated October 5, 2016; a registered mail receipt of October 6, 2016 including a tracking number; and the registered mail envelope for mailing the hearing package to the landlord on November 4, 2016.

Analysis

Section 38 of the Act provides for the return of security deposits. A landlord must return the security deposit to the tenant within 15 days of the end of the tenancy or receiving the tenant's forwarding address in writing, whichever date is later except where the tenant has provided the landlord written consent to make deductions from the security deposit or the landlord has filed an Application for Dispute Resolution to make a claim against it. Where a landlord fails to administer the security deposit in accordance with section 38, the landlord must pay to the tenant double the security deposit under section 38(6) of the Act.

The tenancy ended September 30, 2016 and I have evidence that the tenant provided her forwarding address to the landlord in writing by way of a letter sent to the landlord via registered mail on October 6, 2016. The registered mail is deemed to be received by the landlord five days later on October 11, 2016. Based upon the evidence before me, the tenant did not give the landlord written consent to retain the security deposit and the landlord did not make an Application for Dispute Resolution seeking authorization to make deductions from the deposit from an Arbitrator. Accordingly, I find the landlord was obligated to return the full amount of the security deposit to the tenant by October 26, 2016.

I find the tenant entitled to return of double the security deposit pursuant to section 38(6); however, the tenant expressly waived entitlement to doubling and I abide by her

request that her award be limited to the single amount of the security deposit. Therefore, I award the tenant \$650.00 for return of the security deposit and I award the tenant recovery of the \$100.00 she paid for this Application for Dispute Resolution as requested.

In light of the above, I provide the tenant with a Monetary Order for the sum of \$750.00 to serve and enforce upon the landlord.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$750.00 to serve and enforce upon the landlord.

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 04, 2017

Residential Tenancy Branch