



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order to recover an over-refunded security deposit from the tenants. The tenants did not appear at the hearing. The landlord served the male co-tenant with the hearing document by registered mail sent on December 21, 2016 and successfully delivered on December 22, 2016. The landlord provided the registered mail tracking number and print out from the Canada Post website as proof of service. The landlord's agent testified that he personally served the female co-tenant with the hearing documents at her place of work on December 21, 2016. I was satisfied the tenants were duly served with notification of this proceeding and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order to recover the over-refunded security deposit from the tenants?

Background and Evidence

The tenancy started on August 25, 2015 on a month to month basis. The tenants paid a security deposit of \$750.00 and were required to pay rent of \$1,500.00 on the first day of every month. The tenancy came to an end pursuant to a *2 Month Notice to End Tenancy for Landlord's Use of Property* dated July 28, 2016 that had a stated effective date of September 30, 2016 (the 2 Month Notice). The tenants did not pay rent for September 2016 and returned vacant possession of the rental unit on September 7, 2016. As tenant's compensation for receiving the 2 Month Notice the tenants were provided free occupancy of the rental unit until September 7, 2016 and payment of \$1,100.00.

The landlord, who acts as agent for the property owner, issued a cheque to the tenants in the sum of \$1,850.00 on September 12, 2016. This sum represents a refund of the

\$750.00 security deposit and the \$1,100.00 payment for tenant's compensation. The owner of the property had also issued a cheque to the tenants in the amount of \$750.00 for return of the security deposit on September 9, 2016. The male co-tenant cashed both cheques minutes apart at the same financial institution on September 16, 2016.

The landlord has attempted to recover the over-refunded security deposit from the tenants a number of times by way of phone calls, emails, and a letter dated November 17, 2016. The tenants did not respond to any of the landlord's attempts to communicate with them about the over-payment leaving the landlord to file this Application for Dispute Resolution on December 16, 2016.

The landlord seeks a Monetary Order to recover the over-refunded security deposit of \$750.00 plus recovery of the filing fee.

As documentary evidence for this proceeding the landlord provided copies of: the tenancy agreement; the 2 Month Notice; a security deposit refund summary document signed by the tenant on September 7, 2016 showing a total refund owing of \$1,850.00; both sides of the cheques issued to the tenants on September 9, 2016 and September 12, 2016; the letter of November 17, 2016; and a written summary of events.

Analysis

Under section 38 of the Act, the landlord is required to refund the security deposit to the tenant unless the landlord has a legal right to retain all or part of it. Under section 51 of the Act, a landlord must compensate a tenant the equivalent of one month's rent for receiving a 2 Month Notice. In this case, I accept the unopposed evidence before me that the landlord provided the tenants with compensation under section 51 as required and the tenants were refunded the full amount of the security deposit twice which I consider an obvious error or oversight. I find it would be unjust to deny the landlord's request to recover the over-refunded amount. Accordingly, I grant the landlord's request for a Monetary Order to recover the over-refunded security deposit in the amount of \$750.00.

I further accept the unopposed submissions before me that the landlord attempted to rectify this situation with the tenants on a number of occasions before making this Application for Dispute Resolution and the tenants chose not to respond or refund the overpayment to the landlord. Therefore, I further award the landlord recovery of the \$100.00 filing fee the landlord paid for this Application for Dispute Resolution.

In light of the above, I provide the landlord with a Monetary Order in the sum of \$850.00 to serve and enforce upon the tenants.

Conclusion

The landlord has been provided a Monetary Order in the sum of \$850.00 to serve and enforce upon the tenants.

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: June 21, 2017

Residential Tenancy Branch