



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenants' application for return of double the security deposit. The landlord did not appear at the hearing. The tenants submitted that they sent the hearing documents to the landlord via registered mail on November 16, 2017 using the landlord's service address that appears on their tenancy agreement. The registered mail was returned as unclaimed. The tenants submitted evidence that they had also sent their forwarding address to the landlord using that same service address on September 13, 2016 and the landlord had confirmed receipt of that correspondence. Section 90 of the Act deems a person to have received documents five days after mailing even if the person refuses to accept or pick up their mail. Accordingly, I found the landlord to be deemed served with the hearing documents and I proceeded to hear from the tenants without the landlord present.

Issue(s) to be Decided

Are the tenants entitled to return of double their security deposit?

Background and Evidence

The tenancy started on May 1, 2016 and the tenants paid a security deposit of \$950.00. The tenants were required to pay rent of \$1,900.00 on the first day of every month plus \$150.00 for hydro every second month. The tenants vacated the rental unit on August 31, 2016 and waited for the landlord to arrive at the rental unit to do a move-out inspection on September 1, 2016 but the landlord did not show up.

The tenants sent their forwarding address to the landlord via registered mail on September 12, 2016. The tenants realized they had provided an incorrect postal code so they sent another letter with their forwarding address by regular mail on September 13, 2016. The registered letter sent on September 12, 2016 was returned as being unclaimed; however, in an email sent to the tenant by the landlord on September 16,

2016 the landlord acknowledged receiving the tenant's letter containing the forwarding address. The tenants submit that this shows that the landlord did receive the letter sent regular mail of September 13, 2016.

The tenants testified that the landlord had sought to make a deduction from the security deposit but they were not in agreement with that and they did not authorize the landlord to retain any part of their security deposit. The tenants further submitted that the landlord has not refunded the deposit to them or filed an Application for Dispute Resolution seeking to make a claim against it.

Documentary evidence provided by the tenants included copies of: bank statements for the months of May and June 2016 showing payment of rent and hydro via e-transfer; emails exchanged between the parties between the dates of August 31, 2016 and September 1, 2016; and on September 16, 2016 whereby the landlord acknowledges receipt of the tenant's forwarding address; copies of the letters sent to the landlord on September 12, 2016 and September 13, 2016 with the tenant's forwarding address; registered mail receipts, registered mail envelopes and registered mail tracking information from the Canada Post website.

Analysis

As provided in section 38 of the Act, a landlord has 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to do one of the following: return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not, section 38(6) provides that the landlord must pay the tenant double the amount of the security deposit.

Based upon the unopposed evidence before me, I am satisfied the landlord was in receipt of the tenants' forwarding address on September 16, 2016 and the tenancy was already over by that date. I was not provided any information to suggest the tenants extinguished their right to return of the security deposit; and, the tenants did not authorize the landlord to retain any part of the security deposit in writing. Accordingly, I find the landlord had until October 1, 2016 to either refund the security deposit or file an Application for Dispute Resolution to claim against it. Since the landlord did neither, I find the landlord violated section 38 of the Act and must now pay the tenants double the security deposit. Therefore, I award the tenants return of double the security deposit in the amount of \$1,900.00 as requested, plus recovery of the \$100.00 filing fee paid for this application.

In light of the above, I provide the tenants with a Monetary Order in the total amount of \$2,000.00 to serve and enforce upon the landlord.

Conclusion

The tenants are provided a Monetary Order to serve and enforce upon the landlord in the amount of \$2,000.00 for return of double the security deposit and recovery of the filing fee.

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 02, 2017

Residential Tenancy Branch