



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant; the landlord and her agent.

Issue(s) to be Decided

The issues to be decided are whether tenants are entitled to a monetary order for return of double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed they had verbally agreed to a tenancy beginning on October 1, 2016 and that the tenant paid the landlord a security deposit of \$1,800.00 but that they had not yet signed a written tenancy agreement.

The parties also agreed that the tenants did not move into the rental unit and advised the landlord of their decision to not move in. The tenant submitted documentary evidence to show that on October 13, 2016 she sent the landlord a registered letter providing her forwarding address.

Analysis

Section 16 of the *Act* stipulates that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 1 of the *Act* defines a tenancy agreement an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

From the submissions of both parties, I find they entered into a verbal tenancy agreement regarding the dispute address and that in consideration of the agreement the tenant provided the landlord with a security deposit in the amount of \$1,800.00. As the parties entered in a tenancy agreement and despite the tenants not moving into the

rental unit, I find that both parties were bound by their obligations under the *Act*, pursuant to Section 16.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the tenant's submissions I am also satisfied that the tenant sent the landlord her forwarding address by registered mail on October 13, 2016. Pursuant to Section 90 of the *Act*, I find the landlord is deemed to have received the address by October 18, 2016.

As such, I find the landlord was required to either return the deposit or file an Application for Dispute Resolution seeking to claim against the deposit no later than November 2, 2016 to comply with her obligations under Section 38(1). As there is no evidence before me that the landlord has returned the deposit or filed an Application for Dispute Resolution seeking to retain the deposit, I find the landlord has failed to comply with Section 38(1) and the tenants are entitled to double the amount of the security deposit, pursuant to Section 38(6).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,600.00** comprised of double the amount of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 07, 2017

Residential Tenancy Branch