



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a tenant's application for return of the security deposit. The named landlords did not appear at the hearing. The tenant testified that the hearing packages were sent to each respondent via registered mail on January 13, 2017 and both packages were refused. The tenant provided the registered mail receipt, including tracking numbers, and the returned registered mail envelopes as proof of service. I noted that the service address for the landlord, as seen on the tenancy agreement, was written as being "same" under the address of the rental unit. I also heard that both of the named landlords had been living at the same residential property and I was satisfied that the residential property is the address the landlords were carrying on business as landlords. Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the person refuses to accept or pick up their mail. Accordingly, I found the landlords to be deemed served with the hearing documents and I continued to hear from the tenant without the landlords present.

The tenant requested that his application be amended to reflect that he is seeking return of double the security deposit. Since section 38 of the Act provides that a landlord must repay a tenant double the security deposit in certain circumstances, unless the tenant specifically waives entitlement to doubling, I permitted the application to be amended.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy commenced on October 1, 2016. The tenant paid a security deposit of \$1,000.00 and was required to pay rent of \$2,000.00 on the first day of every month. The landlord referred

to by initials MG signed the tenancy agreement with the tenant; however, the security deposit cheque and the rent cheques were made out to the landlord referred to by initials ZJ.

The tenant was not asked to participate in a move-in inspection of the property and a move-in inspection report was not prepared by the landlords.

The tenant paid the rent for the month of December 2016 and moved out of the rental unit on December 14, 2016 due to a variety of reasons. On December 14, 2016 the tenant sent a letter and the key to the rental unit to ZJ to notify the landlord that he would no longer be renting the unit. The tenant provided his forwarding address in the letter. The security deposit was not returned to the tenant and the landlords did not file an Application for Dispute Resolution to make a claim against it. Nor, did the tenant provide written authorization for the landlords to retain the security deposit.

After the tenancy started, the tenant learned that ZJ is not the owner of the property but is a tenant. MG was introduced to him as being the manager.

As evidence for this proceeding, the tenant provided a copy of the tenancy agreement; the cheques written to ZJ for the security deposit and the first month's rent; the letter of December 14, 2016; the registered mail receipt for mailing the December 14, 2016 letter; and the proof of service for the hearing packages as described previously.

Analysis

The tenant named two individuals as landlords in this application. Section 1 of the Act defines a landlord. As defined, a landlord includes the owner of a property, or a person authorized to represent the owner such as a manager or agent, and

- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

Paragraph (c) applies in cases of a sub-lease and the original tenant becomes the "landlord" of the sub-tenant.

Based on the unopposed submissions of the tenant, I accept that ZJ meets the definition of a landlord even if he is a tenant under a tenancy agreement with the owner of the property as did not have occupancy of the rental unit during the tenancy and he was taking rent from the tenant. I was also satisfied that MG meets the definition of landlord since she signed the tenancy agreement and represented herself as being the manager of the property. Accordingly, I find that both ZJ and MG are jointly and severally liable for any obligation to the tenant under the Act.

As provided in section 38 of the Act, a landlord has 15 days from day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever date is later, to 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 return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's written agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based upon the unopposed evidence before me, I am satisfied the tenant sent his written forwarding address to the landlord on December 14, 2016 by registered mail. Pursuant to section 90, the letter is deemed to be received by the landlord five days later, on December 19, 2016.

I accept the unopposed submissions of the tenant that the landlords did not refund the security deposit or make an Application for Dispute Resolution seeking authorization to retain it. Nor, did they have the tenant's written authorization to retain it. Accordingly, I find the landlords failed to meet their libations under section 38 of the Act and the landlords must now pay the tenant double the security deposit as required under section 38(6) of the Act.

In light of the above, I award the tenant return of double the security deposit in the amount of \$2,000.00 and I further award the tenant recovery of the \$100.00 filing fee he paid for this application for a Monetary Order in the sum of \$2,100.00.

Conclusion

The tenant has been provided a Monetary Order in the sum of \$2,100.00 to serve and enforce upon the landlords.

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 28, 2017

Residential Tenancy Branch