



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlords did not attend or submit any documentary evidence. The tenant stated that the landlords were each served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 27, 2017. The tenant provided undisputed testimony that both package(s) were returned by Canada Post and marked "unknown/moved" and have been submitted as confirmation of service. The tenant also provided a copy of a title search of the rental property dated June 8, 2017 which confirms the address used for service upon the landlords as a valid mailing address. The tenant provided undisputed affirmed evidence that the landlords were evading service. I accept the undisputed evidence of the tenant and find that the landlords were properly served via Canada Post Registered Mail on March 27, 2017 as per the returned Canada Post envelope(s) containing the notice of hearing package(s) and the submitted documentary evidence. I accept the undisputed evidence of the tenant that the proper address for the named landlords was used as per the submitted copy of the property title search dated June 8, 2017. Although the landlord(s) did not claim the package(s), I find that the landlords are deemed sufficiently served 5 days later as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided undisputed affirmed testimony that an \$800.00 security deposit was paid to the landlords at the beginning of the tenancy in September 2014. The tenant stated that he provided his forwarding address to the landlord in person on April 30, 2016 for the return of the \$800.00 security deposit. The tenant also stated that the tenancy ended on April 31, 2017.

The tenant seeks a monetary claim of \$1,700.00 for return of double the security deposit and recovery of the filing fee which consists of:

\$800.00	Return of Original Security Deposit
\$800.00	Compensation, failing to comply Sec. 38(6)
\$100.00	Recovery of Filing Fee

The tenant also stated that he is not aware of an application for dispute filed by the landlord nor did he give permission to the landlord to retain the security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of the tenant that he provided his forwarding address in writing to the landlords on April 30, 2016 and that the tenancy ended on April 31, 2016. I also accept the tenant's undisputed evidence that the landlords have not filed an application to dispute the return of the security deposit nor has the tenant given permission to the landlords to retain it.

As such, I find that the tenant is entitled to return of the original \$800.00 security deposit as per section 38 (1) of the Act.

I also find that as the landlords have failed to comply with section 38 (1) of the Act that the landlords are required to pay an amount equal to the \$800.00 security deposit for failing to comply with the Act.

The tenant has established a total monetary claim of \$1,600.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,700.00,

This order must be served upon the landlords. Should the landlords fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and 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: August 22, 2017

Residential Tenancy Branch