



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant(s) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and to recover the filing fee for the claim.

Only the tenant appeared. As the landlords did not attend service was considered.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on May 29, 2017, a Canada post-tracking number was provided as evidence of service, the landlords did not appear. The tenant stated the packages were returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. Refusal or neglect to pick up the package does not override the deemed service provision of the Act. I find that the landlords have been duly served in accordance with the Act.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary order for return of double the Deposit?

Background and Evidence

The tenancy began approvingly four and a half years earlier. A security deposit of \$700.00 was paid by the tenants. Tenancy ended on May 2, 2017.

The tenant testified that they vacated the premises on May 2, 2017. The tenant stated that they provided the landlords with a written notice of the forwarding address on May 5, 2017, in a letter which was sent by registered mail. A copy of the Canada post tracking number was provided as evidence.

The tenant stated that the landlords did not return their security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on May 5, 2017.

I find the landlords have breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlords were not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlords pay the tenants the sum of \$1,500.00, comprised of double the Deposit (\$700.00) on the original amounts held and to recover the \$100.00 fee for filing this Application.

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlords must be served with a copy of this order as soon as possible.

Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The tenant's' application for return of double the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

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: October 30, 2017

Residential Tenancy Branch