



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

Preliminary Matter

The Landlord did not attend the hearing. The Witness for the Tenant states that on June 12, 2017 the Witness served the Landlord with the application for dispute resolution and notice of hearing (the “Materials”) by posting the Materials on the door of the Landlord’s residence. The Witness states that she took a photo of the posting. The Witness states that the Landlord did receive the Materials as the Landlord reported the Witness to the police for trespassing on that date as told to the Witness by the police.

Section 71(2)(c) of the Act provides that a document not served in accordance with section 88 or 89 may be found to be sufficiently given or served for purposes of this Act. Given the evidence of the report to the police and the Witness evidence of the posting of the Materials I find that the Landlord received the Materials regardless of them not being served in person or by registered mail and that this service is sufficient for the purposes of the Act. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on September 12, 2016 and ended on February 26, 2017. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. The Tenant provided its

forwarding address to the Landlord on March 1, 2017. The Tenant refers to a previous Decision dated March 13, 2017 wherein the Landlord gives evidence of this receipt of the forwarding address and is ordered to deal with the security deposit. The Landlord has not returned the security deposit and has not made an application to claim against the security deposit. The Tenant does not waive any entitlement to return of double the security deposit.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence of the end of the tenancy and receipt of the forwarding address I find that the Landlord had until March 15, 2017 to either return the security deposit or make an application to claim against the security deposit. Based on the undisputed evidence of the Tenant I find that the Landlord has not returned the security deposit and has not made any application. The Tenant is therefore entitled to return of double the security deposit plus zero interest of **\$900.00**. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,000.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,000.00**. If necessary, this order may be filed in the Small Claims 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: November 15, 2017

Residential Tenancy Branch