



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K & G Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of the security deposit. The tenant and a witness appeared at the hearing; however, there was no appearance on part of the landlord. The tenant testified that he served the landlord with notification of this proceeding by way of registered mail sent on June 19, 2017. I continued to hear the tenant's claim conditional upon receiving a copy of the registered mail receipt, and other documents, that I ordered the tenant to provide.

As ordered, the tenant provided me with a copy of the registered mail receipt, including tracking number; the tenancy agreement; the mutual agreement to end tenancy; and, various emails exchanged between the parties near the end of the tenancy.

A search of the Canada Post website shows that an agent for the landlord received the registered mail on June 30, 2017. I note that the landlord's agent who signed for the registered mail appears to be the agent who signed the Mutual Agreement to End Tenancy and identified as "Development Manager" in the emails the tenant provided. Having been satisfied the landlord was duly served with notification of this proceeding I continue to consider the landlord's application for a Monetary Order for return of the security deposit.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit and should the security deposit be doubled?

Background and Evidence

The tenancy commenced on July 15, 2016 and the tenant paid a security deposit of \$725.00. The tenancy came to an end on April 28, 2017 pursuant to a signed Mutual Agreement to End Tenancy.

On April 28, 2017 a move-out inspection took place and the tenant provided the landlord's agent with his forwarding address which the landlord's agent recorded; however, the tenant was not presented with a move-out inspection report to sign and the tenant did not authorize the landlord to make deductions from the security deposit. On or about May 18, 2017 the tenant received a cheque for a partial refund of \$264.45 by mail at his forwarding address. The tenant acknowledged that the glass shower enclosure required additional cleaning; however, the tenant viewed a deduction of \$460.55 as excessive. The tenant requested evidence from the landlord to support a deduction of \$460.55 from his security deposit, via email. The landlord received the email but did not provide support for the deduction of \$460.55. Nor, did the landlord file an Application for Dispute Resolution seeking to make deductions from the security deposit.

Analysis

As provided in section 38(1) of the Act, a landlord has 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing 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 the deposit or file for dispute resolution to retain the deposit within 15 days, and the landlord did not obtain the tenant's agreement to keep all of part of the deposit, the landlord must pay the tenant double the amount of the deposit pursuant to section 38(6) of the Act. The requirement to pay the tenant double the security deposit is not discretionary and I must apply the provision as it is written.

Based upon the unopposed evidence before me, I am satisfied the landlord had been provided the tenant's forwarding address during the move-out inspection of April 28, 2017. I was not provided any information to suggest the tenant extinguished his right to return of the security deposit; and, the tenant did not authorize the landlord to retain \$460.55 of the security deposit. Without having the tenant's consent for a deduction of \$460.55, I find the landlord was required to either refund the security deposit to the tenant, in full, or file an Application for Dispute Resolution to claim against it by May 13,

2017. Since the landlord did not take action that complies with section 38(1), I find the landlord must pay the tenant double the security deposit pursuant to section 38(6) of the Act.

In light of the above, I award the tenant return of double the security deposit, less the partial refund already received, which I calculate to be: \$1,185.55 [calculated as $(\$725.00 \times 2) - \264.45]. I further award the tenant recovery of the \$100.00 filing fee paid for this application. Accordingly, the tenant is provided a Monetary Order for the sum of \$1,285.55 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the amount of \$1,285.55 to serve and enforce upon the landlord.

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 29, 2017

Residential Tenancy Branch