



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 a tenant's application for a Monetary Order for return of double the security deposit, less the partial refund received. The landlord did not appear at the hearing. The tenants testified that the hearing documents were sent to the landlord via registered mail on June 9, 2017 and they were successfully delivered to the landlord on June 12, 2017. The tenants provided the registered mail tracking number and a search of the Canada Post website confirmed service of the hearing package as described by the tenants. I was satisfied the landlord was duly served with notification of this proceeding and I continued to hear from the tenants without the landlord present.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for double the security deposit, less a partial refund of the deposit, as requested?

Background and Evidence

The tenancy started on November 15, 2013 and the tenants paid a security deposit of \$1,200.00. The tenants participated in a move-in inspection with the landlord and a condition inspection report was prepared but the tenants did not receive a copy of it. The tenancy was set to end on May 14, 2017; however, the tenants returned possession of the rental unit to the landlord on May 11, 2017. On May 11, 2017 the landlord did a walk-through of the rental unit while the tenants were there but a move-out inspection report was not prepared. Also on May 11, 2017 the tenant gave the landlord their forwarding address on a piece of paper.

On May 28, 2017 the landlord deposited a partial refund of the security deposit in the amount of \$121.88 directly into the tenant's bank account. On May 29, 2017 the tenants received an email from the landlord itemizing the deductions she had made from the deposit.

The parties exchanged emails with respect to damage in the rental unit and the landlords intention to make deductions from the security deposit. The tenants were not in agreement with the landlord's requests and did not authorize the landlord to make any deductions in writing.

The landlord did not file an Application for Dispute Resolution to make a claim against the security deposit. Nor, did the landlord refund the balance of the security deposit to the tenants.

The tenants request a Monetary Order in the amount of \$2,378.12 which represents return of double the security deposit, less the \$121.88 partial refund, plus recovery of the \$100.00 filing fee.

Analysis

Under section 38(1) of the Act, unless a landlord has a legal right to retain the security deposit, a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

The legal right to make deductions from a security deposit is obtained by receiving written consent from the tenant; authorization from an Arbitrator; or, if the tenant extinguished the right to return of the deposit.

In this case, I was not provided any information to suggest the tenants extinguished their right to return of the security deposit; nor, did the tenants authorize the landlord to make deductions in writing. Accordingly, the landlord was required to either return the security deposit to the tenants, in full, or make a claim against it by filing a Landlord's Application for Dispute Resolution within 15 days of the tenancy ending or receiving the tenant's forwarding address in writing.

Based upon the unopposed evidence before me, I am satisfied the tenancy ended and the landlord was provided the tenants' forwarding address in writing on May 11, 2017 and the landlord did not return the security deposit or file a claim against it within 15 days. Therefore, I find the landlord must now pay the tenants double the security deposit, less the partial fund made on May 28, 2017, as they requested.

I further award the tenants recovery of the \$100.00 filing fee they paid for this Application.

In light of the above, I grant the tenants' request for a Monetary Order in the amount of \$2,378.12 [calculated as $(\$1,200.00 \times 2) - \$121.88 + \$100.00$] to serve and enforce upon the landlord.

Conclusion

The tenants are provided a Monetary Order in the amount of \$2,378.12 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 15, 2017

Residential Tenancy Branch