



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. The landlord did not appear at the hearing. The tenant testified that the hearing documents were sent to the landlord via registered mail within three days of filing, as required, and the registered mail was successfully delivered to the landlord. I proceeded to hear from the tenant and after hearing from the tenant I found him to be very credible and I accepted the tenant's testimony with respect to service upon the landlord. Accordingly, I proceed to consider the tenant's application.

Issue(s) to be Decided

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

Background and Evidence

The tenancy started on August 2015 and ended on April 30, 2017. The tenant was required to pay rent of \$575.00. The tenant had paid the landlord a security deposit in excess of the allowable amount of \$287.50; however, as reflected in a previous dispute resolution decision (file number provided on cover page of this decision), the landlord agreed to refund to the tenant the excess amount collected. The tenant confirmed that the landlord refunded the excessive amount of the security deposit and that the landlord continues to hold a security deposit of \$287.50.

The tenant testified that the landlord did not perform a move-in or move-out inspection with him or prepare condition inspection reports.

The tenant submitted that on May 4, 2017 the tenant enquired about his security deposit with the landlord via text message and the landlord responded via text message indicating the tenant would not receive the deposit back.

After enquiring with the Residential Tenancy Branch, the tenant sent the landlord his forwarding address in writing by registered mail on May 16, 2017. The tenant provided a copy of the registered mail receipt, including tracking number, and print out from Canada Post showing the registered mail was received by the landlord on May 19, 2017.

The tenant testified that he did not authorize the landlord to make any deductions from the security deposit in writing; the landlord did not refund the \$287.50 security deposit to the tenant; and, the landlord did not make a claim against it by filing an Application for Dispute Resolution.

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 tenant extinguished his right to return of the security deposit; and, the tenant did not authorize the landlord to make deductions from the security deposit in writing. Accordingly, the landlord was required to either return the security deposit to the tenant, 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 on April 30, 2017 and the landlord was provided the tenant's forwarding address in writing on May 19, 2017 yet the landlord did not return the security deposit or file a claim

against it within 15 days. Therefore, I find the landlord violated section 38(1) of the Act and must now pay the tenant double the security deposit in the amount of \$575.00, as requested.

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

In light of the above, I provide the tenant with a Monetary Order in the sum of \$675.00 to serve and enforce upon the landlord.

Conclusion

The tenant has been provided a Monetary Order in the sum of \$675.00 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 17, 2017

Residential Tenancy Branch