



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT, MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$4058.
- b. An order to recover the cost of the filing fee.

The Landlord failed to appear at the scheduled start of the hearing which was 1:30 p.m. on December 4, 2018. The Tenant applicant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. The Policy Guidelines provide that a party cannot avoid service by refusing to pick up their registered mail. I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing on August 9, 2018, by registered mail to where the landlord resides and that the documents were sufficiently served even though the landlord failed to claim the registered mail package. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into an oral tenancy agreement that provided that the tenancy would start on February 1, 2012. The tenancy ended on May 1, 2017. The rent was \$800 per month payable in advance on first day of each month at the time the tenancy ended. The tenant(s) paid a security deposit of \$350 at the start of the tenancy.

The tenant(s) provided the landlord with his/her their forwarding address in writing by mailing, by registered mail to where the landlord resides on November 4, 2017.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenant paid a security deposit of \$350 at the start of the tenancy in February 2012. I determined the tenancy ended on May 1, 2017. I further determined the tenant provided the landlord with his forwarding address in writing on by mailing, by registered mail to where the landlord resides on November 4, 2017. The Act provides that it is deemed received 5 days later. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenant has established a claim against the landlord for double the security deposit or the sum of \$700. .

The tenant testified that he has attempted to retrieve his Nordic tracker treadmill from the landlord but she refuses to get him access so that he can have it. He further testified he purchased it in 2011 for about \$3300. He provided evidence that the cost to replace this treadmill is about \$3350. He further testified that given depreciation the cost of a 2011 treadmill similar to his is \$2000. I determined the tenant has established a monetary claim against the landlord for the depreciated value of his treadmill in the sum of \$2000.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2700 plus the sum of \$100 in respect of the filing fee for a total of \$2800.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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:

In conclusion I ordered the landlord to pay to the tenant the sum of \$2800.

This decision is final and binding on both parties.

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: December 04, 2018

Residential Tenancy Branch