



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of the security deposit or pet damage deposit and to recover the filing fee from the landlord for the cost of the application.

The tenants both attended the hearing, and one gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord company joined the call.

The tenant testified that the application and notice of this hearing was served to the landlord on October 22, 2018 by personally handing the package to an agent of the landlord at the office of the landlord company, and the person served is also the person who collected rent cheques delivered by the tenants at that office each month. Both tenants were present. The tenants had also given notice to end the tenancy to the same person.

The *Residential Tenancy Act* contains specific rules for service of an Application for Dispute Resolution (underlining added):

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The *Act* doesn't define an "agent," but defines a "landlord," as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Because the person who was personally served also collected rent and accepted the tenants' notice to end the tenancy, I find that the person performed duties as a landlord under the *Act* and the tenancy agreement. I accept the testimony of the tenant that the agent was personally served, on October 22, 2018 in accordance with the *Residential Tenancy Act*.

All evidence and testimony of the tenant are considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that she resided in the rental unit for over 24 years, and was manager of the apartment complex until January 1, 2017 when the parties entered into a written tenancy agreement for a month-to-month tenancy. Rent in the amount of \$1,085.00 per month was payable on the 1st day of each month, and there are no rental

arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$542.50, which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence for this hearing, as well as a copy of a cheque for the first month's rent and the security deposit.

The tenant further testified that on August 28, 2018 the tenants gave notice to the landlord to end the tenancy effective at the end of September, 2018. A copy of that notice has also been provided for this hearing, which contains a forwarding address of the tenants. The notice was delivered to the same agent of the landlord that rent had been paid to at the landlord's place of business.

The landlord has not returned any portion of the security deposit, despite phone calls to the current building manager, who had advised the tenant at the time of the move-out condition inspection report that the security deposit would be returned the following day.

The landlord has not served the tenants with an Application for Dispute Resolution claiming the security deposit, and the tenants claim double, or \$1,085.00 and recovery of the \$100.00 filing fee.

Analysis

The *Residential Tenancy Act* requires a landlord to return a security deposit to a tenant in full, or make an Application for Dispute Resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either within that 15 day period, the landlord must repay double the amount to the tenant.

I have reviewed the evidentiary material of the tenants, and considering the testimony, I am satisfied that the landlord collected a security deposit in the amount of \$542.50 on January 1, 2017. I am also satisfied that the landlord received the tenants' forwarding address in writing on August 28, 2018 with the tenants' notice to end the tenancy. I find that the tenancy ended on September 30, 2018 and the landlord had an obligation to deal with the security deposit by no later than October 15, 2018. The landlord has not done so, has not returned any portion to the tenants and has not served the tenants with an Application for Dispute Resolution claiming against the deposit. Therefore, I find that the tenants are entitled to double, or \$1,085.00.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants in the amount of \$1,185.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,185.00.

This order is final and binding and may be enforced.

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: February 14, 2019

Residential Tenancy Branch