Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes   MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for an Order to return of the security deposit (Section 38).

I accept the Tenant's evidence that the Landlord was served with the application for dispute resolution and notice of hearing by _registered mail_ in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Landlord requested an adjournment as they did not become aware of the Hearing until April 24, 2011 when they opened the registered mail containing the application and notice of hearing. The Landlord states that as a result, they were not prepared. The one Landlord was calling in from work and had to leave at any moment and the other Landlord could not get away from his business requirements. The Landlord stated that when the registered mail arrived at their address, they were not at home and although their caretakers were instructed to open bills that arrived while they were away, they did not give this instruction for the registered mail. The registered mail was sent on February 18, 2011. The Tenants did not support the adjournment request. An adjournment was not granted as the Landlords were being appraised of the kind of mail that arrived while they were away and chose not to open

this particular type of mail. Further, there has been over 2 months since that mail was sent which would have provided sufficient time for preparation had the Landlord's shown the same regard for registered mail as they did for bills.

Issue(s) to be Decided

Is the Tenant eligible for return of the security deposit?

Background and Evidence

The tenancy began on April 1, 2008 and ended January 15, 2011. The Tenants provided the forwarding address to the Landlords on January 30, 2011. The Landlords did not return the security deposit. The Landlord states that the Tenants left the unit with damages however, the Landlord did not file a claim against the security deposit as they did not have time.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, a landlord must either return a security deposit to a tenant or make an application for dispute resolution claiming against the security deposit. This section further provides that where the landlord has not met the obligation to return a security deposit within the required timeframe or made an application to claim against the security deposit, the landlord must pay the tenant double the amount of the security deposit.

As the Tenant provided the Landlord with a forwarding address, more than 15 days has expired since this notice of address, and the Landlord did not file an application for dispute resolution, the Landlord is obliged by the Act to provide the Tenant with double the amount of the security deposit of $1,100.00, plus the interest on the original amount of security deposit of $12.40. I find that the Tenant has established a monetary claim for **$2,212.40** and is also entitled to recovery of the $50 filing fee, for a total entitlement of **$2,262.40.**

Calculation for Monetary Order

Double security deposit	$2,200.00
interest	12.40
Filing Fees for the cost of this application	50.00
Total Monetary Award	**$2,262.40**

Conclusion

I grant the Tenant an Order under Section 67 of the Act for the amount of **$2,262.40**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 26, 2011.

Residential Tenancy Branch