



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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant only.

The tenant provided documentary evidence the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on May 22, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5th day after it was mailed.

While the tenant testified that the registered mail had been returned as unclaimed, I find that for the landlord to not claim the package is a deliberate attempt to avoid service of these documents.

Based on the above, I find that the landlord has been sufficiently served with the documents pursuant to Section 71 of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant provided a copy of a tenancy agreement signed by the parties on September 15, 2007 for a month to month tenancy beginning on September 1, 2007 for a monthly rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid.

The tenant submits the tenancy ended on April 26, 2014 and that she provided her forwarding address to the landlord by registered mail on May 1, 2014. The tenant testified that tracking information on Canada Post's website confirmed that the landlord received this registered mail.

The tenant testified that she did agree to allow the landlord to retain \$268.46 for hydro costs at the end of the tenancy but that the landlord has failed to return the balance of \$81.54.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit less any mutually agreed upon amounts or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the tenant's undisputed testimony, I accept the tenancy ended on April 26, 2014 and the tenant served the landlord with her forwarding address by registered mail on May 1, 2014. Allowing 5 days I find the landlord is deemed to have received the tenants forwarding address no later than May 6, 2014. As such, the landlord had until May 21, 2014 to either return the balance of the deposit or file an Application for Dispute Resolution seeking to claim against the deposit.

I accept the tenant agreed for the landlord to retain \$268.46 from the deposit for the purposes paying hydro charges, leaving a balance of \$81.54. However, as the security deposit of \$350.00 was held in trust since it was collected I find the tenant is entitled to interest in the amount of \$7.03 on the total amount as calculated on the Residential Tenancy Branch website deposit interest calculator.

As there is no evidence before me that the landlord filed an Application for Dispute Resolution to claim against the deposit at any time since the end of the tenancy, I find the tenant is entitled to double the amount of the remaining balance of deposit or \$163.08 plus the above noted interest of \$7.03 for a total of \$170.11

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$220.11** comprised of \$170.11 as noted above and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: September 26, 2014

Residential Tenancy Branch

