



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for monetary order for the return of double their security deposit under the *Act*.

Tenant J.K. (the "tenant") attended the teleconference hearing and indicated that she was representing both tenants. The tenant gave affirmed testimony, was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the landlord by registered mail on September 16, 2015. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address provided by the landlord. According to the online registered mail tracking website, the landlord signed for and accepted the registered mail package on October 6, 2015. As a result, I find the landlord was served as of October 6, 2015, the day the landlord signed for and accepted the registered mail package from the tenants.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

The tenants paid a security deposit of \$375.00 in July 2015. The tenant stated that due to bedbugs in the rental unit, they vacated on July 30, 2015. The tenants testified that on August 4, 2015, they mailed their written forwarding address dated July 31, 2015 to the landlord by registered mail. The tenants provided a copy of their written forwarding address and the registered mail tracking number in evidence. On September 10, 2015, the registered mail package was returned to sender.

The tenant testified that the landlord did not return any of the tenants' \$375.00 security deposit.

Analysis

Based on the above, and the undisputed documentary evidence and testimony of the tenant, and on a balance of probabilities, **I find** that the landlord has breached of section 38 of the *Act*.

There was no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit, which has accrued no interest to date. There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security deposit. I note that refusal or neglect to accept a registered mail package is not a ground for Review Consideration.

Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed. As a result, I find the landlord was deemed served with the tenants' written forwarding address as of August 9, 2015 which is five days after it was mailed by the tenants by registered mail on August 4, 2015. I also accept that the landlord has failed to return any portion of the tenants' \$375.00 security deposit.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenants within 15 days of August 9, 2015 as required by the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I order pursuant to section 38 and 67 of the *Act*, that the landlord pay the tenants the amount of **\$750.00**, comprised of double the security deposit on the original amount held of \$375.00. The tenants are granted a monetary order in that amount. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: March 11, 2016

Residential Tenancy Branch

