



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD Monetary Order for the Return of the Security Deposit and Pet Damage Deposit

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for double the security deposit and the pet damage deposit as the deposits had been wrongfully retained by the landlord beyond 15 days.

Both parties appeared and gave testimony.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit paid at the start of the tenancy on June 1, 2008.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to double the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit and pet damage deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?
 - Did the landlord return the deposit within 15 days from the end of the tenancy and provision of the forwarding address?

The burden of proof is on the applicant to prove that the deposit was paid and not properly returned within 15 days.

Background and Evidence

The tenant testified that the tenant had moved into the unit on September 1, and moved out on February 28, 2009. The rent was set at \$1,000.00 and the tenant paid \$500.00 security deposit and \$500.00 pet damage deposit. Evidence was submitted showing a written notice from the landlord issued on February 23, 2009, informing tenants of the name of the new owner. Also submitted into evidence was a copy of the envelope and the cheque refunded by the landlord to the tenant in the amount of \$1,019.77 dated March 31, 2009. The tenant testified that the tenancy ended on February 28, 2009 at which time the tenant gave her forwarding address for the return of the deposit. The tenant testified that she dealt with the individual who collected the rent on behalf of the landlord and when the deposit did not arrive, she called to inquire several times during the following 4 weeks. The tenant testified that the person she had been dealing with during her tenancy as agent of the landlord advised her that the owner had to be contacted for the return of the deposit. The tenant testified that the agent of the landlord did not have the owner's address, only the phone number, but could not release this data to the tenant. The tenant testified that she had also sent an email to the agent to verify that certain condition issues in the unit predated her tenancy. The tenant testified that she was later informed that the cheque had been sent to the complex to be picked up and on April 2, 2009, the tenant went to the complex to get the returned deposit. The tenant testified that the deposit was returned more than 15 days after she had left and given the forwarding address. The tenant's position is that because of this, she is now entitled to receive double the deposit under the Act.

The landlord testified that immediately upon learning that the tenant had vacated the unit, the deposit was returned by the landlord and sent to the complex to be picked up, at the tenant's request. The landlord testified that at no time did the owner or manager receive a written forwarding address. The landlord's testimony was that the tenant was

dealing directly with the janitor in the complex and not the owner or manager, who had only recently took over the building. The landlord testified that it was not informed by its agent until near the end of March 2009 that the tenant was seeking the return of the deposits. However, once the landlord was advised, it acted immediately to refund the deposits in full with interest without delay.

The landlord's position is that the tenant has not proven that a written forwarding address was ever furnished to the landlord's agent and that the landlord acted within reason to refund the monies at the earliest opportunity.

The landlord acknowledged that the notice announcing the new owner and manager did not contain contact information, but pointed out that the tenant did not take any steps to contact the owner or manager and instead dealt with the janitor as agent of the landlord.

The landlord requested that it be permitted to call the janitor as a witness and this request was granted. However attempts to reach this individual were unsuccessful.

Analysis

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. In this instance, I find that the landlord refunded both the \$500.00 security deposit and \$500.00 pet damage deposit in full with interest on April 2, 2009.

I find that, if the landlord was provided with a written forwarding address on February 28, 2009 as claimed, then the fifteen days would have expired on or before March 15, 2009. Although I accept that the testimony from the owner and the building manager that the deposit was returned at the earliest opportunity and also that they personally only became aware of the issue near the end of March, I also find that at the end of the tenancy, the tenant had dealt with an agent of the landlord. I find that this agent, who was evidently the janitor, was the tenant's usual contact representing the landlord during the tenancy. In fact, the respondent did acknowledge that the tenant's contact, was acting in the capacity as agent on behalf of the landlord.

I do not accept the landlord's argument that any onus was on the tenant to make efforts to contact the new owner or manager directly. Section 13(2)(e) of the Act requires that the tenancy agreement must include the address for service and the telephone number of the landlord or the landlord's agent. I find that on February 23, 2009 the new landlord partially complied with this provision by issuing a notification with the new owner's and manager's name and instructions about who to make the rent cheque out to. However, I find that this notice failed to include the required contact information.

I note that the landlord disputed the tenant's testimony that a written forwarding address was submitted, pointing out that the tenant had not supplied adequate proof of having given this document to the landlord's agent. However, the landlord's agent who had dealt directly with the tenant at the end of the tenancy was not available to give witness testimony in support of the landlord's contention. During the hearing, the landlord was permitted an opportunity to try and locate this individual so that first-hand testimony could be given from the landlord's perspective about what had transpired. The tenant was able to testify and be cross examined on the matter. Based on the tenant's testimony, I find that on a balance of probabilities it is more likely than not that the tenant did give a forwarding address in writing. The tenant testified that she had left the unit in good condition and was anxious to get the deposit back, having repeatedly phoned the landlord's agent after vacating. I find it evident that this tenant was aware of

her rights and responsibilities as a tenant under the Act and there appears to be no reason why the tenant would neglect to supply a forwarding address, particularly with \$1,000.00 being held in trust on her behalf as incentive.

As an observation I note that, had the landlord conducted a Move-Out Inspection Report as required by section 35 of the Act, this would have served to make it easier to verify whether or not a written forwarding address had been provided by looking in the designated space set aside for that purpose on the form.

Given the evidence, the testimony of both parties and provisions in the Act, I find that once the fifteen days had expired, the tenant was entitled under the Act to receive double the security and pet damage deposits in the amount of \$2,000.00, plus \$20.09 interest. I find that the tenant should also be reimbursed the \$50.00 paid for this application for a total monetary order of \$2,070.09. As the landlord had already paid \$1,019.77, I find that the balance of \$1,050.32 is still owed to the tenant.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$1,050.32. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

July, 2009

Date of Decision

Dispute Resolution Officer