

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution for return of their security deposit and to obtain an order to have the landlord comply with the Act.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary Order for 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 *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on September 1, 2006 as a month to month tenancy with a monthly rent of \$790.00 due on the 1st of the month and a security deposit of \$390.00 was paid on August 3, 2006. The tenancy ended on August 31, 2009.

The tenants submitted into evidence the following documents:

- A summary of the tenants' claim;
- A copy of a cheque stub from the landlord to the tenants dated September 11, 2009 in the amount of \$308.19;
- A summary of interest and deductions from the security deposit; and
- A copy of the move out Condition Inspection Report dated August 31, 2009 and signed by the landlord and the tenant agreeing to the deduction of \$94.45.

The landlord submitted the following documents:

- An internet print out dated September 29, 2009 recording a stop payment request for a cheque dated September 11, 2009. The payee and amount are handwritten on the document;
- A summary of events submitted by the Rentals Department;
- A copy of a judicial review dated July 28, 2004 regarding manner of payment;
- A copy of a cheque stub from the landlord to the tenants dated September 11, 2009 in the amount of \$308.19;

- A summary of interest and deductions from the security deposit; and
- A copy of the move out Condition Inspection Report dated August 31, 2009 and signed by the landlord and the tenant agreeing to the deduction of \$94.45.

The tenant testified that they had provided the landlord with their forwarding address on August 31, 2009 when they completed the move out condition inspection. He further stated that when they did not receive the security deposit by September 18, 2009 they contacted the landlord.

The tenant testified that he was advised to wait a couple of weeks and to see if it came in the mail. When it had not arrived the tenants contacted the landlord and requested a replacement cheque. The tenant picked up the cheque within the first couple of days in October, 2009.

The landlord's agent testified that they had sent out 86 security deposit refunds on September 11, 2009 and that this is the only one that went missing. The agent further testified that when a cheque goes missing they trace it through the bank. They are not able to trace through the mail as they are sent via regular mail.

The landlord's agent testified that they had to be assured the cheque had gone missing before they would do a search or place a stop payment on the cheque and as such waited the additional time.

Analysis

Section 38 of the *Act* states a landlord must return a security deposit within 15 days of after the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find the tenancy ended and the tenant provided the forwarding address on August 31, 2009. As such, the landlord had to repay the tenants by September 15, 2009.

As the landlord had requested a stop payment on the original cheque, I find it reasonable to determine that the refund cheque had originally been produced and likely mailed to the tenants. I am also persuaded by the landlord's submission that payment was realized when the refund was mailed.

The onus is on the tenants to show that the landlord withheld payment of their security deposit. As both parties agreed on the series of events after the end of the tenancy and as the tenant confirmed that the security deposit was issued within two days after the stop payment was requested on September 29, 2009, I find the tenants have failed to show that the landlord withheld payment of the security deposit.

Conclusion

Based on the above, I dismiss the tenant's application without leave to reapply.

As the tenant's were unsuccessful in their application I dismiss their application for recovery of the filing fee for this hearing.

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: January 29, 2010.

Dispute Resolution Officer