

Decision

Dispute Codes:

MNSD and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double his security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2008; that it ended on October 28, 2008; that the Tenant paid a security deposit of \$550.00 on March 04, 2008; that the Tenant provided his forwarding address in writing to the Landlord on October 28, 2008; and that the Tenant authorized the Landlord to retain \$450.00 from the security deposit.

The Agent for the Landlord stated that a cheque, in the amount of \$105.61, was mailed to the Tenant on November 07, 2008. The \$105.61 represented the return of the \$100.00 that the Tenant did not authorize the Landlord to keep and \$5.61 in interest on the original security deposit.

The Tenant stated that he did not receive the cheque until November 21, 2008. He stated that he cashed the cheque in late November so he does not know when the cheque was dated. He stated that the letter that accompanied the cheque was dated November 07, 2008.

The Agent for the Landlord stated that their records show that the security deposit and interest was returned to the Tenant via HSBC cheque # 5339. She stated that their

records show that that the Landlord mailed out a HSBC cheque #5338 and HSBC cheque #5340 on the same date that they mailed cheque #5339. The Landlord submitted documentation that shows HSBC cheque #5338 was cashed on November 14, 2008 and that HSBC cheque #5340 was cashed on November 13, 2008. The Agent for the Landlord contends that these other cheques indicate that cheque #5339 should have been received by the Tenant prior to November 15, 2008. She argued that any delays in the delivery of the cheque were not the fault of the Landlord.

The Landlord did not submit any evidence to corroborate the testimony that the Tenant's the security deposit and interest was returned via HSBC cheque # 5339. I determined that the hearing should be adjourned to provide the Agent for the Landlord with the opportunity to submit evidence to help establish that the security deposit and interest was returned via HSBC cheque # 5339, which, in my view, is integral to this dispute.

The Landlord was advised that she may submit written documentation to the Tenant and to the Residential Tenancy Branch, which shows the security deposit and interest was returned via HSBC cheque # 5339, prior to January 13, 2009. The Tenant was advised that he may submit a written response to the evidence submitted by the Landlord prior to January 31, 2009. Both parties were advised that my decision will be rendered after January 31, 2009.

On January 08, 2009, the Landlord submitted a copy of the cheque stub for cheque #5339. The cheque stub indicates that cheque #5339 was written to the Tenant, in the amount of \$105.61, on November 07, 2008.

The Tenant submitted an undated letter, which was received on January 26, 2009. In the letter the Tenant stated that he did not receive the evidence submitted by the Landlord for the hearing on January 06, 2009 until after the hearing. He contends that this shows that the Landlord may have also failed to comply with the timelines established for returning the security deposit.

Analysis

The evidence shows that this tenancy ended on October 28, 2009; that the Tenant paid a security deposit of \$550.00; that the Tenant authorized the Landlord to retain \$450.00 of the security deposit; and that the Landlord was obligated to return the remaining \$100.00 of the security deposit, plus interest, prior to November 13, 2008.

I find, on the balance of probabilities, that the Landlord wrote a cheque for the amount due to the Tenant on November 07, 2008. In reaching this conclusion I was strongly influenced by the cheque stub for cheque #5339 that shows a cheque was written to the Tenant, in the amount of \$105.61, on that date.

Although I accept the Tenant's evidence that he did not receive the cheque in the mail until November 21, 2008, I also accept the Landlord's evidence that the cheque was mailed on November 07, 2008. In reaching this conclusion I note that it is entirely possible that both statements are true, as the delivery date could have been impacted by Canada Post.

I find, on the balance of probabilities, that cheque #5339 was mailed by the Landlord on November 07, 2008. In reaching this conclusion, I was strongly influenced by the evidence that shows that cheque #5338, which was also written and mailed by the Landlord on November 07, 2008, was cashed on November 14, 2009 and that cheque #5340, which was also written and mailed by the Landlord on November 07, 2008, was cashed on November 13, 2008.

Section 90 of the *Act* stipulates that documents that are served by mail are deemed received 5 days after they are mailed. For the purposes of meeting the legislated timelines in regards to the return of the security deposit, I conclude that the Tenant is deemed to have received the remainder of his security deposit on November 12, 2008, which is five days after it mailed. Although the Tenant may not have actually received the cheque on that date, there is insufficient evidence to conclude that the Landlord was responsible for the delay, as the Landlord mailed the cheque within the appropriate time frame.

Section 38(1) of the *Act* stipulates 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, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord did comply with section 38(1), as the Landlord returned the outstanding security deposit prior to November 13, 2008.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did comply with section 38(1) of the *Act*, I find that the Landlord is not obligated to pay the Tenant double the security deposit.

Conclusion

As I found that the Landlord did comply with section 38(1) of the *Act*, I hereby dismiss the Tenant's application for the return of double his security deposit. As the Tenant's application has been without merit, I also dismiss his application for compensation for the cost of filing this Application for Dispute Resolution.

Date of Decision: February 09, 2009.