

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking return of her security deposit in double on the grounds that the landlord did not return it within 15 day of the latter of the end of the tenancy or receipt of the tenant's forwarding address. The tenant also seeks to recover the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of the security deposit in double and recovery of the filing fee.

Background and Evidence

This tenancy began on May 1, 2007 and ended on September 30, 2009. Rent was \$1,695 per month and the landlord held a security deposit of \$847.50.

During the hearing, the tenant's representative gave evidence that a cheque for the security deposit and interest had been received on October 21, 2009.

Therefore, he stated that the landlord had not met the obligation under section 31(1) of the *Act* to return the deposit within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address and the tenant is therefore entitled to have it doubled under section 38(6) of the *Act* .

The tenant's forwarding address was provided on the move-out Condition Inspection Report Form on the last day of the tenancy.

The tenant's representative also submitted into evidence a copy of the envelope in which the cheque was sent bearing a Canada Post date stamp of October 15, 2009.

The landlord submitted a copy of the cheque dated October 14, 2009. He stated that the cheque had been mailed on October 14, 2009 and that even the stamped envelope provided by the tenant's representative proved the deposit had been returned on time.

Analysis

This dispute turns on interpretation of the term "returned" within the meaning of section 38(1) of the *Act*. The tenant holds that the payment is returned when in the hands of the tenant. The landlord is of the view that the payment is returned when it is posted in the mail box.

The Residential Tenancy Branch has consistently, over many years, held to the long standing principle of common law that return of the security deposit is dated on the day that the landlord puts it in the mail.

Conclusion

As the envelope carrying the cheque which returned the security deposit is dated on the 15th day following the end of the tenancy, I find that it was returned on time as required under section 38(1) of the *Act*.

Therefore, the tenant's application is dismissed without leave to reapply and the tenant remains responsible for her filing fee.

February 16, 2010