

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of the double deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

This fixed-term tenancy commenced on December 15, 2008 and terminated on December 15, 2009. The tenant paid a security deposit of \$450.00 on November 30, 2008.

On December 7, 2009 the tenant provided the landlord with a written forwarding address, sent via registered mail; the landlord confirmed receipt of the letter.

On January 5, 2010 the tenant received return of the deposit paid, plus interest. The tenant is claiming double the deposit as the landlord did not return the deposit within fifteen days of the end of the tenancy; December 30, 2009.

The landlord spoke to the tenant on December 29, the date he wrote the deposit cheque, and asked if he could drive over to the tenant's home to deliver the deposit cheque. The tenant declined. Upon request of the tenant the landlord then spoke with the tenant's mother, who called him a short time later. The tenant's mother said she could not come to pick up the cheque, so she asked the landlord to place the cheque in

the mail. The landlord then mailed the cheque on the same date of issue, December 28, 2009.

The tenant stated he spoke with the landlord on December 30, 2009, and that he declined the landlord's request to bring him his cheque as he was not home and the landlord would not be able to access mail box.

The landlord asked to speak with the tenant's mother, who was present with the tenant, but not participating in the hearing. The tenant declined this request.

The tenant did not supply a copy of the envelope in which his deposit cheque had arrived, so could not provide testimony in relation to the post-mark date on the envelope.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the landlord did repay the deposit within fifteen days, as required by section 38 of the Act. The tenant has the burden of proving that the landlord did not mail the deposit cheque within fifteen days of the end of the tenancy and has provided insufficient evidence supporting his claim that the cheque was mailed after December 30, 2009.

Further, I reject the tenant's claim that receipt of the deposit on January 5, 2010, placed the landlord outside of the fifteen day period required by the Act. Section 38 of the Act provides, in part:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

*(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(Emphasis added)

I find that the tenant has failed to provide evidence supporting his claim that the landlord did not repay him within fifteen days by placing the cheque in the mail for delivery outside of the required time frame.

Therefore, I find that the tenant's Application is dismissed.

As the tenant's Application is without merit I decline to award filing fee costs to the tenant.

Conclusion

The tenant's Application is dismissed.

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: June 09, 2010.

Dispute Resolution Officer