

DECISION

Dispute Codes: MNSD, MNDC

Introduction

This hearing dealt with an application by the tenant for an order for the return of double the security deposit minus the portion that he has already received from the landlord. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be Decided

What is the amount of the deposit paid by the tenant? On what day did the tenant provide the landlord with his forwarding address in writing? Did the landlord make approved deductions off the deposit? Did the landlord act in a timely manner with regard to the return of the deposit? Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy began on October 01, 2005 at a different property owned by the landlord. The tenant paid a security deposit of \$550.00 plus a pet deposit of \$100.00. The landlord filed a receipt for this amount.

On March 01, 2006, at the request of the landlord, the tenant moved to the address that is the subject of this hearing. In a letter dated January 10, 2006, the landlord informed the tenant about the terms of the transfer to the new rental unit. One of the terms stated that the deposit in the amount of \$650.00 would be transferred to the new address. The tenant signed this letter in acknowledgment of having accepted all the terms, laid out in the letter.

On February 13, 2006, the parties signed a new tenancy agreement for the new rental address.

The tenant testified that he paid an additional \$100.00 towards a pet deposit, to a by-law officer who visited him in February 2006. The tenant stated that he paid cash to the officer and did not receive a receipt. The tenant stated that the only proof of payment that he has is the initial of the by-law officer beside the amount, on the new tenancy agreement.

The landlord testified that the tenant did not pay any additional funds towards the deposit and there are no records of this alleged payment on file. Both parties filed copies of several emails between the two parties, written after the tenancy ended, in which the tenant insists on having paid an additional \$100.00 for the pet deposit, while the landlord denies having received it.

Eventually, on May 12, 2011 the landlord returned \$100.00 to the tenant accompanied by a letter which states "*The City does not warrant that this amount is owed to you, however, in the interests of concluding the tenancy, this amount is being issued to you*".

Both parties provided copies of the new agreement. The landlord's copy is completely typewritten except for a handwritten entry for a pet damage deposit of \$100.00, dates and signatures on the last page of the tenancy agreement and addendum (landlord only). The tick mark stating that the pet deposit is not applicable is also typewritten.

The tenant's copy is identical to the landlord's copy except that there is an initial by the hand written pet deposit amount of \$100.00, the date that the pet deposit was paid appears to be written by a different writer, several terms of the agreement are underlined, page 6 of the agreement has an additional signature by the tenant which is crossed out and the addendum is signed by both the tenant and the landlord.

In addition to the above differences, upon taking a closer look at the signatures and dates on page 6 of the agreement, it appears that some alterations have been made. While I am not a handwriting expert, I find that there are some very obvious differences in the handwritten content of the tenancy agreements filed by the landlord and the tenant.

The tenancy was supposed to end on March 31, 2011 but the tenant moved out on April 04, 2011. The tenant agreed to pay \$131.48 for rent owed for the first four days of April. The tenant stated that he provided the landlord with a forwarding address on the phone soon after he moved out. He followed it up with an email on April 12, 2011 in which he gave the landlord his forwarding address. The landlord agreed that she received the forwarding address in writing, on this date.

The landlord made a deduction off the security deposit in the amount of \$131.48 that was agreed upon by the tenant. However, the landlord also made a deduction of \$46.79 for unpaid utilities which was not authorized by the tenant.

The landlord stated that the City who is the landlord, owns the utility account and it is the City's policy that any unpaid utility accounts are reconciled at the time the deposit is returned to the outgoing tenant.

Therefore the landlord understood that she did not have to discuss this deduction with the tenant prior to making the deduction. The landlord returned the balance of the security deposit plus interest to the tenant on April 20, 2011.

The tenant pointed out that with five days for mail service, it would be deemed received on April 25, 2011. Despite stating in his written submission that he received the return of the security deposit cheque on April 27, 2011, the tenant testified at the hearing, that he received the cheque on April 28, 2011. The tenant also testified that the cheque was received without any explanation of the deductions. However the tenant filed a copy of an email dated April 27, 2011 from the landlord which provides an explanation of the deductions. The tenant is making a claim for double the return of \$750.00 which he states he paid to the City towards the security and pet deposits.

The tenant has agreed to deductions for rent (\$131.48) and the amount received (\$494.73) from his total claim of \$1,500.00. The tenant is claiming the balance of \$900.35 that he believes is owed to him by the landlord. The correct balance works out to \$873.79, which should be the amount that the tenant is claiming from the landlord.

The tenant argued that the landlord did not conduct a move out inspection and therefore the right to retain any or all of the security deposit was extinguished. The landlord stated that the rental unit was being torn down and therefore the landlord had no intention of retaining any portion of the security deposit towards damage to the unit and accordingly it did not matter if the unit was in need of repair and/or cleaning. The landlord stated that for the above reasons, she did not conduct a move out inspection.

The landlord retained rent with the approval of the tenant but failed to discuss the utility charges with the tenant prior to making that deduction. During the hearing, the tenant did not dispute the amount owed to the City, he disputed the deduction of this amount off the security deposit without his approval. The tenant argued that the City overstepped its authority by getting information about the tenant's outstanding utility bill.

Analysis

Based on the documentary evidence and verbal testimony of both parties, I make findings as follows:

Forwarding address:

The tenant provided the landlord with his forwarding address in writing on April 12, 2011. Both parties filed evidence and agreed that this was the date on which the landlord obtained the forwarding address of the tenant in writing.

Therefore, pursuant to s. 38 of the *Residential Tenancy Act*, the legislated 15 day period ended on April 27, 2011 and the landlord was required to return the security deposit or make application to keep all or a portion of the deposit by this date.

Date of the return of the security deposit:

The landlord filed evidence of returning the security deposit by mailing a cheque dated April 20, 2011 and testified that the cheque was mailed on that same day. Therefore I find that the landlord acted in a timely manner by mailing the cheque within the legislated 15 day period.

The tenant offered contradictory testimony when he testified that he received it on April 28, 2011 while his written submission states that he received it on April 27, 2011. For this reason, I prefer the evidence of the landlord which was consistent and credible and I accept the landlord's testimony that the cheque was mailed on April 20, 2011. Accordingly, I find that the security deposit was returned in a timely manner.

Amount of the security deposit:

The tenant stated that he paid a total of \$750.00 while the landlord argued that \$650.00 was received by the City and filed a receipt to support her testimony. The tenant did not have any evidence to support his testimony of having paid an additional \$100.00, other than an initial on his copy of the tenancy agreement which did not match the landlord's copy.

Based on my observations of the same tenancy agreement filed by both parties, I find that on a balance of probabilities, it is more likely than not that the agreements are not identical copies of each other and do not reflect or support the tenant's testimony that he paid an additional \$100.00, to a by-law officer in cash.

It is unlikely for an employee of the City to accept cash from a tenant and not issue a receipt. It was the tenant's responsibility to obtain a receipt as proof of payment especially when he was paying cash.

The tenant did not have a receipt for this alleged payment and had no other evidence to support his testimony of having paid an additional \$100.00 other than an initial on page 3 of **his copy** of the tenancy agreement.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, I find that the tenant has not met the burden of proof that he paid a total of \$750.00 towards the security deposit. The only receipt filed for the security deposit was filed by the landlord in the amount of \$650.00.

Accordingly, I prefer the testimony of the landlord as I find it to be credible and therefore, I find that the total amount of the deposits is \$650.00.

Deductions off the security deposit:

The tenant agreed to the deduction off the security deposit, for rent for the period of April 01-04. However, the landlord made a deduction for utilities without the tenant's consent. Despite the City's policy on unpaid utility accounts and even though the tenant agrees to pay the utility bill, I find that the tenant did not authorize the landlord to retain this amount from the deposit.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

I find the landlord failed to repay the **full** security deposit or make an application to retain a portion of the security deposit within 15 days of receiving the tenant's forwarding address.

Accordingly, based on sworn testimony of both parties and the documentary evidence filed by both parties, I find that the tenant paid a deposit of \$650.00. It accrued \$23.02 in interest (September 30, 2005 to August 23, 2011). The landlord returned the deposit within 15 days of receiving the forwarding address of the tenant in writing. The landlord made one unauthorized deduction in the amount of \$46.79, off the security deposit. The landlord returned \$494.73 to the tenant and at a later date an additional \$100.00.

The landlord should have returned \$541.54 to the tenant but retained a portion and returned \$494.73, leaving a difference of \$46.81.

Even though the utility payments were due to the landlord, the landlord should have discussed this payment with the tenant prior to making the deduction.

The following is a summary of the payments and refunds between the two parties:

1.	Security plus pet deposits	\$650.00
2.	Accrued Interest	\$23.02
	Total owed to tenant	\$673.02
	Minus Rent for April 1-4	131.48
	Balance owed to tenant	\$541.54
	Returned to tenant	\$494.73
	Balance owed to tenant	\$46.81

I find that at the end of the 15 day period, the landlord owed the tenant \$46.81 and pursuant to s. 38, is required to pay the tenant double this amount.

Accordingly, I find that the landlord owes the tenant \$93.62. However the tenant agreed that he was responsible for the cost of utilities in the amount of \$46.79 and the landlord returned \$100.00 to the tenant. I will use the offsetting provisions of section 72 of the *Act* to determine that the tenant owes the landlord the difference of \$53.17.

Conclusion

The tenant has not proven his case and therefore his application is dismissed in its entirety. I find that the tenant owes the landlord **\$53.17**. Since this is the tenant's application, legislation does not permit me to grant the landlord a monetary order for this amount. The landlord is at liberty to file her own application in the event that the tenant does not make payment.

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: August 30, 2011.

Residential Tenancy Branch