



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This application initiating this hearing was brought by the tenant on November 5, 2011 seeking a Monetary Order for return of her security and pet damage deposits on the grounds that the landlord did not return or make application to claim upon them within the latter of 15 days of the end of the tenancy or receipt of the tenant's forwarding address.

As a matter of note, this hearing was originally scheduled for January 26, 2012 but was adjourned to the present session on the landlord's prior written request due to her unavailability due to travel commitments.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a monetary award for return of the contested portion of the security and pet damage deposits.

Background and Evidence

This tenancy ran from July 1, 2010 to September 30, 2011. Rent was \$700 per month and the landlord held security and pet damage deposits of \$350 each paid at the beginning of the tenancy.

During the hearing, the parties gave evidence that the tenant had given notice on September 13, 2011 to end the tenancy on September 30, 2011 which the tenant acknowledge could have left her responsible for the rent for October 2011.

However, the landlord was able to find a new tenant for October 1, 2011 and the tenant was relieved of the consequences of the late notice.

During the hearing, the tenant gave evidence that she had provided the landlord with her forwarding address by email sent on October 2, 2011. The parties had agreed that the tenant would pay to have the carpets cleaned, but, as a result of the tenant not receiving a text message advising her where to leave the keys, there was some delay because the cleaner could not access the rental unit. In the interim, the landlord stated that her computer had crashed and she could no longer access the tenant's forwarding address.

Having not received the deposits, the tenant served the landlord with her forwarding address a second time by placing a letter through the landlord's mail slot on October 20, 2011 and which the landlord acknowledged having received on October 21, 2011.

On November 5, 2011, the landlord returned \$543.20 by mail to the tenant, retaining \$156.80 for the carpet cleaning as the parties had agreed. Before the landlord did so, she texted the tenant to see if she would prefer to pick up the money order or have it mailed. The tenant said she did not reply because she had already filed her application for dispute resolution. She stated that she did not receive the mailed money order until November 14, 2011.

Analysis

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return a security deposit or file for dispute resolution to make claim against it unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the deposit(s).

In the present matter, I accept the evidence of the landlord that a computer failure resulted in her losing the tenant's forwarding address and she had no other effective means to contact the tenant at time.

That, combined with the fact that email is not included in the approved methods of document service of under section 88 of the *Act* and with the confirmation that the

tenant did not get the message regarding keys, leads me to discount October 2, 2011 as the service date of the forwarding address.

The tenant served her forwarding address by putting it through the landlord's mail slot on October 20, 2011. While section 90 of the *Act* would deem it to have been received three days later, the landlord acknowledges having received it on October 21, 2011.

The landlord gave evidence, and the tenant concurred, that the landlord texted her on November 5, 2011 that she had the tenant's money order and asked if she wanted to pick it up. The tenant stated she did not reply because she had already filed her application for dispute resolution.

The landlord stated that when she did not hear back from the tenant, she emailed the money order on November 5, 2011.

The tenant submitted a copy of the envelope but the post-marked date is not readable. The tenant stated that she received the money order on Monday, November 14, 2011. As a matter of notice, Friday, November 11, 2011 was a holiday on which there was no mail delivery.

Therefore, I accept the evidence of the landlord that she mailed the money order on November 5, 2011 which is the 15th day after she received the tenants forwarding address through her mail slot on October 21, 2011.

Common interpretation of the order to "repay" under section 38 (1) of the *Act* is to consider the landlord has repaid on the date the payment is sent, not the date it is received by the tenant.

Accordingly, I find that, after deducting the agreed carpet cleaning costs, the landlord did return the balance within 15 days as required under the *Act* and the tenant is not entitled to an order for double the amount.

Conclusion

The application is dismissed without leave to reapply.

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: February 17, 2012.

Residential Tenancy Branch