



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, the interest and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

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

Background and Evidence

The parties agree the tenancy began on July 1, 2011. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant. Tenancy ended October 31, 2011.

The tenant writes on his application that it took 32 days for the landlord to return the security deposit and is seeking to be compensated for the return of double the security deposit.

The tenant testified that it was either on November 1, 2011 or November 2, 2011, at the move-out inspection, that he provided the landlord with his forwarding address. The tenant stated he gave his forwarding address verbally to the landlord and he is pretty sure it was written down at that time.

The landlord testified the move-out inspection was done on November 2, 2011 and the tenant did not provide his forwarding address.

The landlord testified he requested from the tenant a copy of the tenant's hydro account to ensure hydro was paid. The landlord states he received that information by fax from the tenant on November 24, 2011, and on the tenant's hydro account it showed an active account for the tenant with a partial address. The landlord states when he received the tenant applications for dispute resolution that was when he first had the

tenant forwarding address in writing. Filed in evidence is a copy of the hydro account, which shows a partial address of the tenant.

The landlord testified that the tenant did not want the cheque mailed to the address on the hydro account and asked if he could come and pick it up from the landlord residence.

The landlord testified that the cheque was ready on November 24, 2011, for the tenant. However, the tenant did not pick-up the cheque for his security deposit until November 30, 2011.

The tenant agrees that he did ask the landlord not to mail the cheque, and asked the landlord to bring the cheque to the landlord's residence for him to retrieve and he did receive the return of his security deposit on November 30, 2011.

The tenant testified that he did not cash the cheque for his security deposit for sometime after receiving it, as he was not happy that the landlord retained \$40.00 more than what was agreed to at the move-out inspection. The tenant stated he filed his application based on the landlord retaining \$40.00 more than what was agreed.

The landlord testified that there was an agreement for the wall to be repaired at the move-out inspection and it cost \$80.00 to repair the wall.

Neither party filed a copy of the move-out inspection report.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The parties agree that the move-out inspection was performed on November 2, 2011.

The evidence of the tenant was that he gave the landlord verbal notice of his forwarding address and that he was pretty sure it was written down at the move-out inspection.

The evidence of the landlord was that he never received the tenants forwarding address in writing, until he was served with the application for dispute resolution. However, the landlord did state that he did have knowledge of where the tenant lived from the tenants hydro account information and the tenant did not want the landlord to mail the cheque for his security deposit to that address.

In this case, the onus is on the tenant to prove that he provided his forwarding address in writing to the landlord, such as in a letter. The evidence of the tenant was that he was pretty sure it was written down at the move-out inspection.

Section 38 of the Act states - Return of security deposit

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.

I find the first time the tenant provided a forwarding address in writing to the landlord was by serving the landlord with his application for dispute resolution, which was filed on December 8, 2011.

During the hearing that the tenant alleged that he was upset as the landlord retained a portion of the security deposit that he did not consented to. However, I note that there is no reference in the tenant's application based on that issue. The application dispute details states "took 32 days to get damage deposit back" [reproduced as written].

Section 59 (1) of the Act states - Starting proceedings

59 (1) [Repealed 2006-35-83.]

(2) An application for dispute resolution must

- (a) be in the applicable approved form,
- (b) **include full particulars of the dispute** that is to be the subject of the dispute resolution proceedings,

I find in the absent of the tenant not providing full particulars of the dispute in his application for dispute resolution, it would be prejudicial to the landlord to amend the tenants claim as the hearing had commenced. Therefore, I must only accept evidence that relates to the details of claim in the tenant's application.

As I have found the first time the tenant provided a forwarding address in writing, to the landlord, was by serving the landlord with his application for dispute resolution. The tenant at that time had in his possession his security deposit. Therefore, I find that the landlord has not breached the Act and the tenant's application for return of double the security deposit is dismissed.

I find as the tenant was not successful with this claim, the tenant is not entitled to recover the cost of filing the application.

Conclusion

I dismiss the tenants claim for return of double the security deposit.

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 23, 2012.

Residential Tenancy Branch