



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of her security deposit. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlords' agent (the agent) did not dispute the tenant's sworn testimony that she sent the landlords a copy of her dispute resolution hearing package by registered mail shortly after she filed it with the Residential Tenancy Branch on December 29, 2011. The agent believed that the package was likely received early in January 2012. I am satisfied that the tenant served this package in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to obtain a return of her security deposit plus interest from the landlords? Is the tenant entitled to a monetary award for an amount equivalent to her security deposit due to the landlords' failure to adhere to the provisions of section 38 of the *Act*?

Background and Evidence

This periodic tenancy commenced on May 1, 2008. Monthly rent by the time the tenant ended this tenancy and vacated the rental premises on October 29, 2011 was set at \$1,160.00, payable in advance on the first of the month.

The landlords continue to hold the tenant's \$580.00 security deposit paid on April 7, 2008. The agent said that she did send a cheque for the security deposit to the tenant to the forwarding address provided by the tenant but it does not appear to have been received by the tenant. The agent said that when the tenant first contacted the landlords to enquire about the status of her security deposit return, the agent checked with the landlords to ensure that the security deposit cheque was sent to the correct mailing address. The tenant confirmed that her mailing address has remained the same since she provided her forwarding address in writing in the landlords' mailbox along with her extra set of keys on October 29, 2011. The agent did not dispute that the tenant provided her forwarding address in writing to the landlords on October 29, 2011 and confirmed that the security deposit cheque was sent to the tenant at the correct mailing

address, the same one listed on the tenant's application for dispute resolution. The agent provided no details as to when the cheque was sent to the tenant and did not provide a copy of the cheque or the envelope. She did confirm that the tenant has not cashed the security deposit cheque.

The tenant applied for a monetary award of \$1,160.00, which was to compensate her for the original security deposit plus interest and to compensate her for the landlords' failure to return her security deposit within 15 days of the end of her tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In this case, there is undisputed evidence that the tenancy ended on October 29, 2011. There is also undisputed evidence that the tenant left her keys and her forwarding address in writing in the landlords' mailbox that same day. The landlords did not apply for dispute resolution within 15 days of October 29, 2011. The agent did not maintain that there was any written agreement to allow the landlords to retain any portion of the tenant's security deposit. The agent said that the landlords were not claiming any damage arising out of this tenancy and that she sent the tenant a cheque for the full return of her security deposit plus interest to the forwarding address the tenant left with the landlords. Once the landlords and the agent became aware that the tenant had not received the security deposit cheque, the landlords did not cancel the existing cheque and re-issue another cheque to the tenant or make arrangements to ensure that the tenant received a return of her security deposit.

Based on this evidence, I order the landlords to cancel any existing cheque that the landlords may have issued to the tenant for the return of her security deposit. I find that the tenant is entitled to a return of her \$580.00 security deposit plus \$6.39 for applicable interest owing from April 7, 2008 until the date of this decision.

I am not satisfied that the landlords have demonstrated that they have complied with the provisions of section 38 of the *Act*. Pursuant to section 38(6) of the *Act*, I find that the

tenant is entitled to a monetary award of \$580.00 for the landlords' failure to comply with the terms of section 38 of the *Act*.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,166.39, which enables the tenant to recover her original security deposit plus interest and to obtain a monetary award of \$580.00 for the landlords' failure to comply with the terms of section 38 of the *Act*. The tenant is provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I also order the landlords to cancel payment on any existing cheque for the return of the tenant's security deposit that they may have issued. I also order that any new cheque that the landlords issue to the tenant to comply with this decision and order be sent by registered mail so as to ensure that it is received by the tenant.

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: March 08, 2012

Residential Tenancy Branch