



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

Both the landlord and the tenant appeared and each gave affirmed testimony.

Issue(s) to be Decided

Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the Act.

Background and Evidence

The tenancy began in August 2011, at which time a security deposit of \$825.00 was paid and the tenancy ended July 31, 2012. According to the tenant, shortly after the tenancy ended, the tenant provided the landlord with a text message with a forwarding address to refund the tenant's security deposit. The tenant did not submit a copy of this communication into evidence.

The landlord testified that he did not receive a written forwarding address from the tenant but managed to obtain the tenant's new address in September 2012.

The landlord testified that he mailed the tenant a cheque for the full amount of the security deposit by registered mail sent on September 21, 2012. The landlord provided proof of service and a copy of the cheque. The landlord also provided proof that the tenant retrieved the mail and signed for it on September 25, 2012.

The tenant acknowledged receiving a cheque for the deposit refund in September 2012, but testified that it was not cashed as the tenant felt that the landlord was required to refund double the security deposit because over 15 days had passed since the forwarding address was given to the landlord.

Analysis

In regard to the return of the security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit, without first obtaining an order to do so, does not exist.

A landlord can keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord obtains an order through an application for dispute resolution to retain the amount. The landlord must either make the application or refund the security deposit within 15 days after the tenancy had ended and the receipt of a written forwarding address.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

Based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit, nor did the landlord make any application for an order to keep the deposit.

That being said, I find that the tenant failed to prove that a written forwarding address was ever provided to the landlord. Even if it was provided as the tenant contends, the tenant was not able to establish what exact date this had occurred. Given this fact, I find that the tenant has not proven that she is entitled under the Act to receive a refund for double the deposit.

I find that the landlord refunded the \$825.00 deposit by cheque, but the tenant apparently did not cash the cheque she received and instead chose to file an application for dispute resolution three days later. I find that the tenant is entitled to a refund of the original deposit, but find it likely that the original refund cheque is now stale-dated and may no longer be honoured by the bank. For this reason, I find that the cheque received on September 25, 2012, should either be returned to the landlord or have a "stop payment" placed on it by the landlord.

I find that that the landlord is required to again forward the tenant's security deposit in the amount of \$825.00.

Based on the testimony and evidence presented during these proceedings, I hereby issue a monetary order in favour of the tenant for \$825.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is awarded monetary compensation in the amount of \$825.00 premised on the expectation the original security deposit refund cheque has not been cashed and will be either returned to the landlord or have a stop payment placed on it by the landlord.

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: December 18, 2012.

Residential Tenancy Branch