



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAUGHNESSY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

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 double the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

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 on January 1, 2012, at which time a security deposit of \$450.00 was paid. The tenancy ended February 28, 2013. The tenant provided the landlord with a written forwarding address prior to the end of the tenancy.

The tenant testified that they received a cheque from the landlord dated March 13, 2013. However this refund was not received until March 25, 2013. The tenant is seeking a refund of double the security deposit.

The landlord testified that he mailed the tenant a cheque for the full amount of the security deposit on March 13, 2013. A copy of the cheque was in evidence. The landlord's position is that the refund was paid two days prior to the 15-day deadline following the end of the tenancy.

Analysis

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. A landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution and successfully obtains a monetary order to retain the deposit to compensate the landlord.

Section 38(10) specifies that, 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,

the landlord must do one of the following:

- (c) *repay*, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Act clearly requires that the landlord repay the deposit within 15 days. The Act does not state specifically that the refund must be received by the tenant within 15 days.

The landlord must choose to either make the application or send a refund of the security deposit within 15 days after the tenancy has ended and the written forwarding address is received, whichever is later.

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.

I find that this landlord was required under the Act to mail the deposit refund on or before March 15, 2013, to comply with section 38. The landlord stated that the cheque was issued and sent on March 13, 2013. There is evidentiary support to verify that the cheque was at least *issued* on March 13, 2013.

According to section 90 of the Act, mail sent on March 13, is deemed to be received in 5 days, which would be March 18, 2013.

In conflict with the landlord's testimony, the tenant testified that the cheque dated March 13, 2013, did not arrive until March 25, 2013.

If true, this would seem to indicate that the cheque from the landlord dated March 13, 2013 was not likely mailed on the same date it was issued, but was sent some time later.

Unfortunately, the only source of documentary evidence that could verify exactly when the cheque was mailed, would be the envelope addressed to the tenants, showing a post mark to prove when Canada Post had processed the mail. I find that the tenant was the only party who could possibly provide a copy of this envelope with the date stamp from Canada Post. However, I find that it was not provided by the tenants.

Without supportive evidence, I am left to deal with conflicting verbal testimony from these parties in regard to the date of mailing, where the only evidentiary material available is a copy of the cheque.

It is important to note that, in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving during these proceedings, that the compensation being claimed is justified under the Act.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof is not likely to prevail.

In this instance I find that the parties are completely at odds with one another's facts with no common ground on the key issue of when the security deposit refund was mailed. Despite the two disparate versions of the course of events, I find it is not necessary for me to determine which side is more credible or which set of "facts" is more believable.

The reason is because the burden of proof clearly lies with the applicant tenant, and I find that the tenant has not succeeded in sufficiently proving that the landlord failed to mail the security deposit refund cheque within the 15-day deadline.

Given the above, I find that the tenant's application and monetary claim for double the security deposit must be dismissed.

Conclusion

The tenant is not successful in the application and the claim for double the security deposit was dismissed.

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: June 11, 2013

Residential Tenancy Branch