



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNSD, O and FF

Introduction

This application was made by the tenant on April 28, 2013 seeking a Monetary Order for return of her security deposit in double. The claim is made under section 38(6) of the *Act* on the grounds that the landlord did not return the deposit or make application to claim against it within 15 days of the latter of the end of the tenancy or receipt of the tenant's forwarding address.

As a preliminary matter, the tenant had named two individuals as respondent landlords in her application, one of whom is no longer employed by the company. It was determined early in the hearing that the landlord is, in fact, a numbered company as named on the rental agreement and on rent cheques. Therefore, I have amended the style of cause accordingly with consent of the parties to make the numbered company the sole respondent.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for return of the security deposit and, if so, must the amount be doubled?

Background and Evidence

This tenancy began on June 1, 2011 and formally ended on April 30, 2012, although the tenant vacated on April 16, 2012.

The applicant tenant moved in with a co-tenant who had resided in the rental unit for some time and who remains to the present in the rental unit. The applicant tenant paid \$575, half the monthly rent, by cheque to the corporate landlord although she was not on the rental agreement.

As a matter of note, I accept the submission of the tenant that such payments did establish her status as a tenant rather than an occupant.

The applicant tenant submitted a copy of a cheque for \$275 dated June 1, 2011 which she offers as proof that she paid a portion of the security deposit (initially claimed as \$287.50).

However, the landlords pointed out that the cheque was made out to the co-tenant and it bears the memo notation, "half rent for June."

The tenant stated that the landlord had subsequently acknowledged receipt of the security deposit, but the landlord stated that he had never received the \$275 payment.

Analysis

In order to qualify for return of a security deposit, a tenant must be able to prove on a balance of probabilities that the deposit was paid. In the present matter, the parties have given contradictory evidence as to verbal acknowledgement and agreement with respect to the deposit.

Therefore, I must rely on the written record which in this instance is a copy of a cheque made out to a party other than the landlord (the co-tenant), and for a purpose other than to pay a security deposit, "half rent for June."

Accordingly, I must find that the tenant has failed to prove that she paid any security deposit to the landlord and may not make a claim for its return.

Therefore, the application is dismissed without leave to reapply.

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: July 23, 2013

Residential Tenancy Branch

