



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Austin & Susan Investment Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit, the accrued interest and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on May 1, 2007 on a fixed term tenancy until June 1, 2008 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The Tenant vacated the rental unit on July 31, 2012. The monthly rent was \$925.00 payable on the 1st of each month and a security deposit of \$462.50 was paid upon move-in.

The Tenant states that the forwarding address in writing was provided by letter to the Landlord on June 15, 2012. The Tenant states that she made further contact by telephone on August 20, 2012 (left a voicemail) for the return of the security deposit. The Tenant made another attempt to contact the Landlord on August 30, 2012 by telephone and again left a voicemail requesting the return of the security deposit. The Landlord returned her call later in the day stating that the deposit was sent on August 13, 2012. The Tenant states that she received the \$462.50 security deposit in the mail on August 31, 2012. The Tenant has submitted a copy of the envelope that shows that it was mailed on August 30, 2012 and the cheque for the security deposit. The Tenant

states that the Landlord failed to return the accrued interest of \$11.66. The Tenant seeks a monetary order for \$485.82. This consists of \$462.50 for not complying with the Act and \$23.32 for doubling the \$11.66 accrued interest that was not returned.

The Landlord has confirmed that he issued a cheque for \$462.50 on August 13, 2012. The Landlord also states that he sent the cheque to the Tenant on August 13, 2012 by Canada Post mail.

Analysis

Section 38 of the Residential Tenancy Act states,

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,**

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.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

I find based upon the evidence provided that the Landlord has failed to return the security deposit within the allowed 15 day period as per the Act. I prefer the evidence of the Tenant over that of the Landlord. The Tenant relies on the Canada Post Postmark which shows that the envelope for the cheque was mailed on August 30, 2012 and not on August 13, 2012 as stated by the Landlord. The Landlord has also failed to return the accrued interest of \$11.66 to the Tenant. I also note that section 38 (6) does not

apply to accrued interest and on this basis the request for doubling the interest is dismissed. I find that the Tenant has established a monetary claim for \$474.16, consisting of \$462.50 under section 38 (6) and \$11.66 for the accrued interest. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$524.16. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$524.16.

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 26, 2013

Residential Tenancy Branch

