



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DD Acquisition Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that on July 26, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the party named as the Agent for the Landlord on this Application. In the absence of evidence to the contrary, I find these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Is the Tenant is entitled to the return of the security deposit?

Background and Evidence

The Tenant stated that the tenancy began on June 01, 2010; that she paid a pet damage deposit of \$275.00; that she did not pay a security deposit; that the tenancy ended on June 30, 2013; that the Tenant did not authorize the Landlord to retain the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she provided the Landlord with her forwarding address when the condition inspection report was completed, at which time she wrote it on the report. She is not certain when the report was completed, but she believes it was July 02, 2013 or July 03, 2013.

The Tenant stated that the Landlord mailed her a cheque, which was dated July 09, 2013, in the amount of \$275.00. She stated that she cannot recall when she received the cheque; that she believes she received it sometime during the last week of July of 2013; and that she was certain she received it after July 20, 2013.

Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the tenancy ended on June 30, 2013 and that the Tenant had provided the Landlord with her forwarding address by July 03, 2013. Although it is possible that the Landlord received the forwarding evidence on July 02, 2013, I have insufficient evidence to make that determination. I therefore find that the Landlord was required to repay the pet damage deposit by July 18, 2013.

On the basis of the undisputed evidence, I find that the pet damage deposit was returned to the Tenant sometime in July of 2013, although the Tenant does not know precisely when she received the deposit. Although she believes it was received during the last week of July, I note that the last full week of July was Sunday, July 21, 2013 to Saturday, July 27, 2013, and it is possible that she received it sometime during this week. She stated that she is certain that she received it after July 20, 2013, and it is therefore possible that she received it on July 21, 2013, depending on the method of mail delivery and, if it is delivered to a community mail box, how frequently she checks the mail.

The *Act* requires a landlord to return a pet damage deposit within the fifteen day time limit. The *Act* does not specify that the deposit must be received by the Tenant within that fifteen day period. In my view a pet damage deposit is considered returned on the day it is mailed when it is returned by mail. As the Landlord returned this pet damage deposit by mail, I find that the Landlord was obligated to mail it by July 18, 2013.

Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed. In the event that the Landlord mailed the pet damage deposit on July 16, 2013, it would be deemed received on July 21, 2013; in the event that the Landlord mailed the pet damage deposit on July 17, 2013, it would be deemed received on July 22, 2013; and in the event that the Landlord mailed the pet damage deposit on July 18, 2013, it would be deemed received on July 23, 2013. As the Tenant has not clearly established that she had not received the refund by July 23, 2013, I find that I have insufficient evidence to conclude that the Landlord failed to comply with section 38(1) of the *Act*.

As the Tenant has submitted insufficient evidence to show that the Landlord failed to comply with section 38(1) of the *Act*, I find that the Tenant is not entitled to anything other than the pet damage deposit refund that she has already received.

As the Tenant has failed to establish the merit of this Application for Dispute Resolution, I find the Tenant is not entitled to recover the fee she paid to file this Application.

Conclusion

The Application for Dispute Resolution has been 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: October 27, 2013

Residential Tenancy Branch

