



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to recover double the security deposit; and to recover the filing fee from the landlord for the cost of this application.

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 recover double the security deposit?

Preliminary Matter

The tenant had submitted several documents into evidence after they made their application. However, the landlord stated that none of this evidence was served to the respondent landlord, as required under the Residential Tenancy Rules of Procedure.

On questioning the applicant tenant, it was revealed that they had not been able to serve the subsequent evidence on the other party prior to the hearing, and had only submitted the evidence package to the Residential Tenancy Branch.

The Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

Instructional information and other relevant data are contained in the application material given to each applicant and served on each respondent.

Given the above, I find I must decline to consider the additional evidentiary material submitted only to the Residential Tenancy Branch for the hearing. However verbal testimony from both parties was accepted.

Background and Evidence

The tenancy started on July 1, 2012 and ended on July 31, 2013. Rent was \$2,200.00 per month and the tenant paid a security deposit of \$1,100.00.

Based on the testimony of the tenant, they had given the landlord a forwarding address in writing after the move out condition inspection conducted at the end of the tenancy. The tenant pointed out that the move out condition inspection report in evidence did not show that they had written down the address as the tenant had provided it on the back of the form. However, the landlord testified that the tenant had never given them the address in writing, but did acknowledge that they received the forwarding address verbally at the end of the tenancy.

According to the landlord on August 14, 2013, they sent a refund cheque to the tenant by regular mail. The amount was for the entire deposit, minus the \$60.00 deduction agreed upon by the tenant in writing on the move out condition inspection report.

The tenant disputed the landlord's claim that the cheque was mailed on August 14, 2013 and pointed out that the Canada Post date stamp of the envelope verified that the mail was processed by post office on August 17, 2013, which is beyond the 15-day deadline. The tenant feels they are therefore entitled to double the refund.

Analysis

I have carefully considered all the evidence before me, including the affirmed testimony of both parties.

I find that the reason the *Act* grants 15 days from either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing, is to permit a window of time comprised of 15 full days for the landlord to determine damage, if any, to the rental unit. If damage is discovered and assessed, the landlord has 15 days in which to file an application to make a claim against the tenant. In the alternative, if the landlord finds there is no reason to make any claim against the security deposit, the landlord still has the same 15 days available for the security deposit to be returned.

I find that, in this instance, the landlord was required to return the tenant's deposit by August 15, 2013. I find that, the tenant did not adequately prove that the security

deposit cheque, dated August 14, 2013, was not actually mailed by the landlord on August 14, 2013, as claimed.

I find that the Act does not state the tenant must *receive* the funds within 15 days. I accept the landlord's testimony that the refund from the landlord was mailed out within the 15-day time frame specified under the Act.

I find that, as long as a cheque is dated within the time frame specified under the Act and sent within this period, the landlord would be in statutory compliance with the *Act* and the tenant would therefore not be entitled to recover double the security deposit.

Given the above, I find that the tenant's application seeking to to recover double the security deposit must be dismissed and I hereby do so without leave to reapply.

Conclusion

The tenant is not successful in the application and the claim for a refund of double the security deposit is dismissed without leave.

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: November 27, 2013

Residential Tenancy Branch

