



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYPRESS GARDEN APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the tenant established an entitlement to doubling of the security deposit?

Background and Evidence

The tenancy commenced November 1, 2011 and the tenant paid a security deposit of \$307.00. The tenancy ended August 31, 2013. Prior to the end of tenancy the tenant gave her forwarding address to the landlord in writing. The landlord did not prepare condition inspection reports and the landlord informed the tenant that her security deposit would be sent to her in the mail.

On September 20, 2013 the tenant telephoned the landlord to inform the landlord that she had not yet received a refund of the security deposit. The tenant requested a replacement cheque be issued as she was going on a trip September 22, 2013.

The landlord testified that he contacted his superior who suggested that perhaps the refund cheque went missing in the mail or taken by the former tenants of the tenant's new residence. The landlord informed the tenant that she would have to wait another week for a replacement cheque.

The tenant questioned the landlord's suggestion that former tenants may have taken her cheque since she has a locked mailbox at her current residence.

Upon returning from the trip on October 6, 2013 the tenant expected to find a replacement refund cheque in her mailbox but there was none. The tenant contacted the landlord again to request a replacement cheque. The landlord issued a cheque in the amount of \$307.50 on October 7, 2013 and the tenant picked it up on October 9, 2013. The tenant has cashed the cheque for \$307.50.

The tenant is of the position she is entitled to doubling of the security deposit since the landlord failed to refund the security deposit within 15 days of the tenancy ending. The tenant provided a copy of the refund cheque dated October 7, 2013 and telephone records indicating the phone calls she placed to the landlord in September and October 2013.

The landlord submitted that his superior told him that a refund cheque was mailed to the tenant within 15 days of the tenancy ending (the first cheque), although the landlord did not know the exact date this was done, and the suggested that through no fault of the landlord the cheque was not received to the tenant. The landlord appearing at the hearing acknowledged that he did not personally issue or see the first cheque, and did not put it in the mail. The landlord did not produce any witness to provide evidence as to issuance or mailing of the first refund cheque or documentary evidence, such as accounting or banking records, which would indicate issuance of a refund cheque prior to the one issued October 7, 2013.

Analysis

Under section 38(1) of the Act, a security deposit is to be returned to the tenant within 15 days of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever date is later. Where a landlord fails to comply with this requirement, section 38(6) provides that the landlord must pay the tenant double the security deposit.

In this case, the later of the above dates is August 31, 2013. Thus, the landlord was required to return the security deposit to the tenant no later than September 15, 2013.

While I appreciate that from time to time documents are not delivered or lost in the mail, in this case, the landlord did not provide any corroborating evidence to establish a refund cheque was issued and sent to the tenant on or before September 15, 2013. Had I been presented such evidence this decision may have been different; however, based upon the documentary evidence that is before me, I find the tenant has established that the security deposit refund was not issued until October 7, 2013. Since this is more than 15 days from the date the tenancy ended and more than 15 days since

the tenant notified the landlord that a refund cheque was not received as of September 20, 2013 I find the tenant entitled to double the security deposit as requested.

I award the tenant double the security deposit, less the refund of \$307.50 she has already collected; plus, recovery of the filing fee. The tenant is provided a Monetary Order calculated as follows:

Double security deposit (\$307.00 x 2)	\$ 614.00
Filing fee	50.00
Less: amount already collected by tenant	<u>(307.50)</u>
Monetary Order	\$ 356.50

To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$356.50 to serve and enforce as necessary.

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: February 27, 2014

Residential Tenancy Branch

