



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Martello Property Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double her security deposit. Both parties participated in the conference call hearing.

Although the tenant initially requested the return of double both her security and pet deposits, at the hearing she withdrew the claim for double her pet deposit as she discovered that she had not paid a pet deposit.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2007 and ended on October 31, 2011. They further agreed that at the outset of the tenancy, the tenant paid a \$400.00 security deposit and that she provided the landlord with her forwarding address in writing on November 9, 2011.

The evidence shows that 16 days after having provided her forwarding address in writing, the tenant emailed the landlord to ask why her deposit had not been returned, to which the landlord replied that the cheque had been mailed the week before. On December 9, the tenant advised the landlord via email that she received a cheque dated November 17, 2011 in the amount of \$220.20. She reported that her name was misspelled on the cheque and arrived in an unsealed envelope with no postage. She contacted the landlord who advised that they had put a stop payment on that cheque as it had been presumed lost in the mail and that the landlord had arbitrarily and without the tenant's written permission applied deductions against the security deposit. The tenant did not attempt to negotiate the cheque and although the landlord provided a replacement cheque, the parties agreed that the replacement cheque had not been negotiated.

The landlord provided a number of reasons why deductions were made, but acknowledged that she did not have the tenant's written consent to retain any part of the security deposit. The

landlord testified that their mail is run through a machine and the machine must have missed placing postage on the envelope containing the security deposit cheque.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. Section 38(4) clearly states that the landlord may only retain an amount from the security deposit if she has the tenant's written consent or an order from the Director of the Residential Tenancy Branch.

I find that the landlord received the tenant's forwarding address on November 9, 2011 and I find that she failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address. Although the landlord made an attempt to repay part of the deposit, the landlord was negligent in not ensuring that the envelope was properly addressed and all postage paid. The landlord did not have the tenant's written consent to retain any part of the deposit and was not permitted under the legislation to arbitrarily retain any monies. I find that the landlord is liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$400.00 and I find that she is obligated under section 38 to return double this amount together with the \$10.09 in interest which has accrued to the date of this judgment. I further find that the tenant is entitled to recover the \$50.00 filing fee paid to bring her application. I award the tenant \$860.09.

Conclusion

I grant the tenant an order under section 67 for \$860.09 which includes the double security deposit, interest and the \$50.00 filing fee paid to bring this application. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 17, 2014

Residential Tenancy Branch

