



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties agree they entered into a tenancy agreement which started September 15, 2011 and which ended in late February or early March 2012. According to the tenancy agreement that was signed by the parties on September 15, 2011, the tenant was obligated to pay \$1,425.00 rent monthly in advance on the 15th day of the month. The tenancy was for a fixed term ending March 15, 2012 after which the tenant was required to vacate the rental unit. The tenant was also required to pay a security deposit of \$700.00.

The landlord gave evidence that he has no record of the tenant paying a security deposit, and believes that the security deposit was not paid.

The landlord gave evidence that he received two rental payments of \$1,425.00 by cheque from the tenant, dated October 1, 2011 and November 1, 2011. The landlord's

evidence is that the parties intended to amend the date rent was payable from the 15th of the month to the 1st of the month. His evidence is that the parties intended to “catch up” the rent owing for the period September 15, 2011 to October 1, 2011 at a later date.

The landlord's evidence is that the parties discussed the possibility that they might switch to a direct deposit system, rather than using cheques. The landlord says he received a direct deposit payment on December 1, 2011 for \$1,425.00. His evidence is that the bank account where he received the direct deposit is one that he uses only for purposes of the rental unit. He asked his bank who the payment was from, but the bank told him they could not provide that information for privacy reasons. The landlord says he then contacted the tenant and told him he had received a direct deposit payment for the rent. The landlord says the tenant responded by saying that was good, and both parties assumed that the tenant had set up a direct deposit system for paying the rent.

The tenant's evidence is that he told the landlord at the beginning of the tenancy that his rent would be paid from his children's Trust account. The tenant's evidence is that he is not the trustee of the Trust account and does not have access to the Trust accounting records. The tenant's evidence is that he assumed his December 2011 rent was paid from his children's Trust account.

The landlord gave evidence that he received another direct deposit payment on January 1, 2012 for \$1,425.00. Again, both parties assumed that the tenant's children's Trust account had paid the tenant's rent.

On February 1, 2012, the tenant gave the landlord a cheque from the tenant's numbered company for \$1,425.00 for February 2012 rent. The tenant advised that he would be moving out at the end of February 2012.

On March 1, 2012, the landlord received another direct deposit payment for \$1,425.00. Since the tenant had moved out, the landlord assumed the payment was intended to cover the half-month's rent owing from September 15, 2011 to October 1, 2011 and the as-yet-unpaid security deposit. The landlord contacted the tenant and the tenant asked him to reimburse his children's Trust by writing a cheque to one of his children. The landlord wrote a cheque payable to one of the tenant's children for \$700.00, which was intended to be the return of the tenant's security deposit. The landlord provided a copy of the cancelled cheque in his evidence for this application. The landlord kept the \$725.00 balance as payment for rent for the period September 15 to October 1, 2011.

On April 1, 2012, the landlord received another direct deposit payment for \$1,425.00. At this point, the landlord says he contacted the tenant to advise him that the tenant had

mistakenly made another rent payment. The landlord says the tenant told him he would look into it. The tenant asked the landlord to reimburse his children's Trust account by writing a cheque payable to a landscaping company that is partially owned by the children's Trust. The landlord says he had discovered that a screen was missing and a latch was broken in the rental unit and so he deducted \$25.00 and wrote a cheque for \$1,400.00 payable to the landscaping company. The landlord provided a copy of the cancelled cheque in his evidence.

The landlord received no further direct deposits until December 1, 2012 when he received another direct deposit for \$1,425.00. On January 1, 2013, the landlord received another direct deposit for \$1,425.00. The landlord contacted the tenant who asked him to reimburse his children's Trust account by a cheque for \$2,850.00 payable to one of his children. The landlord provided a copy of the cancelled cheque in his evidence.

On April 1, 2013, the landlord received another direct deposit for \$1,425.00. He contacted the tenant who asked him to reimburse his children's Trust account by cheque for \$1,425.00 payable to another one of his children. The landlord provided a copy of the cancelled cheque in his evidence.

On May 9, 2013, the landlord says he was contacted by a former tenant of the rental unit. The former tenant had just discovered that he had failed to cancel his direct deposit arrangement with his financial institution. Consequently, in any month where there was \$1,425.00 or more in his account on first of the month, the former tenant's financial institution made an automatic transfer of \$1,425.00 to the landlord's bank account. The former tenant had discovered there had been seven such transfers and those transfers were on the dates the landlord received direct deposits he thought were on behalf of the tenant in this application.

According to the landlord, this was the first indication that either party had that the direct deposits to the landlord's bank account had all come from the former tenant and not from the tenant's children's Trust account.

The payments received and made by the landlord are summarized as follows:

Date landlord received direct deposit	Amount of direct deposit to landlord	Date landlord wrote a cheque to "reimburse" tenant	Amount of cheque from landlord
December 1, 2011	\$1,425.00		
January 1, 2012	\$1,425.00		
March 1, 2012	\$1,425.00	March 8, 2012	\$ 700.00
April 1, 2012	\$1,425.00	April 6, 2012	\$1,400.00
December 1, 2012	\$1,425.00		
January 1, 2013	\$1,425.00	January 7, 2013	\$2,850.00
April 1, 2013	\$1,425.00	April 28, 2013	\$1,425.00
Total:	\$9,975.00		\$6,375.00

The landlord claims the tenant did not pay rent for September 15 to October 1, 2011, and he claims \$356.25 unpaid rent for this period (less than a half-month's rent based on settlement discussions with the tenant). The landlord also claims the tenant did not pay rent for December 2011 and January 2012, and claims \$2,850.00 in unpaid rent for those two months. The landlord further claims \$6,375.00 which is the total amount the landlord paid to the tenant's children or tenant's children's Trust's company, at the request of the tenant, to "reimburse" the tenant for amounts the landlord received by direct deposit. The landlord's total claim is \$9,581.25 plus his RTB filing fee of \$100.00.

The landlord's evidence is that he contacted the tenant in this application in May 2013 to explain that the direct deposits he had credited to the tenant had actually come from the former tenant.

The landlord provided a printed excerpt of an email exchange between the parties. The email exchange reads, in part:

Email from landlord to tenant August 7, 2013:

"As per our conversation here is the information we talked about.

I have forwarded the email I sent you in June that includes the attachment with the original breakdown.

So to summarize it looks like this.

\$8525.00 for rent and [former tenant]'s direct deposits I returned to you.

\$700.00 for damage deposit. (no record of any CQ or cash deposit)

\$356.25 for splitting the difference to move in 2 weeks early. (no record of CQ or cash)

\$9581.25 Total

Please let me know if you have any questions.

We can meet any time if you need to see my bank statements to validate [former tenant]'s deposits."

Email from landlord to tenant October 15, 2013:

"Here is the e-mail with the rent summary that I sent you in August 2013. The attached letter has details."

Email from tenant to landlord October 18, 2013:

"After reviewing the numbers you presented and discussing them with you, I do not believe I have an issues with what you have presented."

Email from tenant to landlord November 29, 2013:

"I acknowledge receiving \$8,525.00 by mistake from You and needs to be repaid. I do not recall what we decided on the deposit issue. I will attempt to pay back the amount owing by Dec 7, 2013."

Email from tenant to landlord December 10, 2013:

"I received your voicemail yesterday, I am still not in a position to pay the agreed upon Monies but I will continue to work on it. I will keep you posted on my progress."

Email from landlord to tenant December 16, 2013:

"Any update from today's voicemail?"

Email from tenant to landlord December 16, 2013:

"I am not in a position to cut you a check yet. It seems like 2 steps forward, one step back sometimes."

The landlord filed his application for dispute resolution on January 8, 2014.

The tenant gave evidence that at the time he moved out, in February or March 2012, he and the landlord agreed that they were in good standing. His evidence is that he did not receive any requests from the landlord for more money for a year and a half. He states that the landlord has not provided sufficient proof that the direct deposits did not come from the tenant's children's Trust.

The tenant's position is that an RTB hearing is not the right venue for this dispute, since the dispute is not related to the tenancy.

Analysis

I find that I have jurisdiction to decide the landlord's claim, since the entire dispute stems from a tenancy agreement entered into by the parties. I find the parties were both under the impression that the direct deposits received by the landlord were rental payments made on behalf of the tenant, both during the tenancy and after the tenancy. The direct deposits are therefore related to the tenant's use and occupation of the rental unit. I find the landlord is entitled, pursuant to Section 58(1), to apply for dispute resolution regarding the direct deposits.

I find the landlord is entitled to his claim for unpaid rent for the periods September 15 to October 1, 2011 (\$356.25), the month of December 2011 (\$1,425.00), and the month of January 2011 (\$1,425.00); the unpaid rent claim totals \$3,206.25. The tenant did not provide any evidence that he made payments for those rental periods. As well, the email exchange provided by the landlord indicates that the tenant agreed, at that point, that he had not made those rental payments.

I find the landlord is also entitled to his claim for amounts he paid in the mistaken belief that the tenant's children's Trust had made direct deposits to his bank account after the end of the tenancy; the payments made in error total \$6,375.00. I accept the landlord's evidence that his former tenant made all of the direct deposits set out above. The tenant in this application has not provided any evidence that any of those payments were made by him, or on his behalf.

I accept the landlord's evidence that he made payments of \$6,375.00 to the tenant's children or a company owned in part by the tenant's children's Trust. I also find that the payments totalling \$6,375.00 were made to those third parties on the instructions of the tenant, and the tenant is liable to repay those amounts. Also, the email exchange provided by the landlord indicates that the tenant agreed, at that point, that he was responsible to repay the payments made in error to his children or the company owned in part by his children's Trust.

The landlord is also entitled to recover his RTB filing fee of \$100.00. The total amount due the landlord is \$9,681.25.

Conclusion

I grant the landlord a monetary order for \$9,681.25.

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: April 17, 2014

Residential Tenancy Branch

