



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of her security and pet deposits, and for reimbursement for repairs.

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

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agree the tenancy started on November 1, 2013 and the tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00.

The tenant moved out in early April 2014 and paid rent for the period through April 15, 2014. The parties completed a walk-through inspection on April 14, 2014.

The tenant gave evidence that the door lock stopped working around April 12 or 13, 2014. She replaced it with a new lock, and then notified the landlord she had done so. She says she did not think to call the landlord before she replaced the lock. She says the landlord agreed to reimburse her \$42.83 for the new lock, and said he would include the amount with her security deposit.

She says she received a cheque from the landlord on May 6, 2014, however her first name was spelled wrong, as "Coraine" and her last name was not included. The amount was also wrong, it was \$1,200.00 and should have been \$1,242.83 to include the lock expense.

The tenant's evidence is that she texted the landlord immediately to tell him the problems with the cheque. She says he texted back and asked her to change her name and the amount on the cheque, and then put his initials beside the changes. She refused to do so.

The tenant provided a copy of the May 6, 2014 text message exchange with the landlord:

T: "... I received the cheque today, but that is not how you spell my name (not even close). I wrote down my name and address when we did our inspection April 15th. Plus the total was for \$1240 because I bought that lock."

L: "Just change your name and the amount to 1240 and put ok beside the changes the bank can phone me if their is a problem"

L: "Pk"

T: "I would rather that you send me a new cheque. What you are asking me to do is illegal."

The tenant says the landlord then told her to take the cheque to his bank. She did so, the bank called him, but he was not home. She says he called her later and asked her to return to the bank. She suggested she rip up the cheque and he mail her a new one. He agreed and asked for her name and address again.

The tenant's evidence is that she gave the landlord her forwarding address in writing initially during the April 14th inspection, again by text on May 2, 2014, and for the third time over the phone on May 6, 2014. She did not receive a replacement cheque.

The tenant gave evidence that she then filed for dispute resolution. The landlord contacted her on May 8, 2014 and told her that he would not write a new cheque unless she cancelled the hearing. She refused to cancel the hearing.

The landlord disputes that he received the tenant's forwarding address in writing on April 14, 2014. He says he did not get it until May 2, 2014 by text. He says he put the cheque in the mail the same day. He says he thought he spelled her first name correctly and did not have her last name with him. The landlord's position is that the tenant could have put her last name on the cheque and cashed it.

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later).

Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on April 15, 2014. It is not necessary that I decide whether the tenant provided her forwarding address in writing on April 14 or on May 2, 2014. In either case, the landlord did not apply for dispute resolution to make a claim against the security deposit within 15 days. Also, the tenant did not agree in writing to the retention of any part of

the security deposit. The landlord is therefore obligated to return the entire security deposit to the tenant.

Although the landlord sent the tenant a cheque for \$1,200.00 on May 2, 2014, the cheque was not properly made out to the tenant. I find the tenant was not obligated to alter the cheque in order to cash it. It is the landlord's obligation to provide a cheque in cashable form. Since the landlord did not do so, I find he did not return the security deposit within the 15 day timeframe. In fact, it has now been more than four months since the tenant advised him of the problems with the cheque.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit. In this case, the landlord failed to repay the tenant the amount of \$600.00 from her security deposit and \$600.00 from her pet deposit. The tenant is therefore entitled to an order for twice those amounts, which totals \$2,400.00. The tenant is also entitled to recover her RTB filing fee of \$50.00 from the landlord.

Based on the landlord's May 6, 2014 text asking the tenant to change the amount on the cheque to \$1,240.00, I find the landlord agreed to reimburse the tenant \$40.00 for the new lock. The tenant is therefore also entitled to the \$40.00.

I grant the tenant an order under Section 67 for \$2,490.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for \$2,490.00.

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: September 19, 2014

