



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Macaulay Manor Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was a hearing with respect to the tenant's application for the return of her security deposit, including double the amount. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award in the amount of her security deposit?
Is the tenant entitled to payment of double the amount of the deposit pursuant to section 38(6) of the *Residential Tenancy Act*?

Background and Evidence

The rental unit is an apartment in Victoria. The tenancy began in June, 2012. The tenant paid a security deposit of \$347.00 at the start of the tenancy. The tenant gave notice and moved out of the rental unit on May 31, 2014. The landlord's representative and the tenant conducted a move-out condition inspection on June 2, 2014. At the move-out inspection the tenant agreed in writing to a \$100.00 deduction from her security deposit for carpet cleaning. She provided a forwarding address to the landlord written on the document whereby she agreed to the deduction from the deposit.

On June 24, 2014 the tenant filed her application for dispute resolution to claim double the amount of her security deposit.

The landlord's representative testified that that landlord mailed a cheque to the tenant on June 16, 2014, but the envelope enclosing the cheque was returned to the landlord on June because the address was incomplete and did not include a suite number. When the landlord learned of the tenant's application for dispute resolution they mailed

the cheque to the tenant at her proper address. The cheque was received and cashed by the tenant on July 7, 2014.

At the hearing the tenant submitted that she was entitled to double the deposit amount because she did not receive the payment within 15 days of the date she provided her forwarding address to the landlord. The tenant referred to the copy of the original envelope sent by the landlord. The tenant submitted that it was post marked June 18, 2014, which was more than 15 days after she provided her forwarding address to the landlord and in fact she did not receive the cheque until July 7th.

The landlord's representative testified that the forwarding address provided by the tenant was not clear. The suite number was not written on the same line as the municipal address and in any event the actual unit number could not be read correctly.

With respect to the date when the cheque was mailed, the landlord said that it was mailed on June 16, 2014 along with other cheques. I inspected the photocopy of the envelope and noted that a postage stamp was affixed to the envelope and the date referred to by the tenant appeared to be the postal cancellation mark stamped on the envelope by the Post Office when the mail was processed.

In a letter to the tenant the landlord explained the reason for the delay and offered to pay the tenant's filing fee for her application if the tenant agreed to cancel the hearing.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenant double the amount of the security deposit and pet deposit.

I am satisfied on the evidence presented, that the tenant consented in writing to the deduction of \$100.00 from her security deposit and that the landlord did mail the cheque to the tenant within 15 days of receiving her forwarding address, as required by the *Residential Tenancy Act*. The *Act* does not require that the tenant receive the deposit within 15 days, only that the landlord acts to return it within the required time.

I find that the cheque was delayed in reaching the tenant, in part due to her failure to accurately record her forwarding address and i find that the landlord acted promptly to re-send the cheque as soon as it learned of the error.

The tenant has received the agreed balance of her deposit and her application is therefore dismissed without leave to reapply, but based on the landlord's written agreement to pay the amount of the filing fee for this application, I award the tenant the filing fee in the amount of \$50.00.

Conclusion

I grant the tenant an order under section 67 for the sum of \$50.00. 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: November 12, 2014

Residential Tenancy Branch

