



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Asset Management Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for a monetary order for double the amount of the security deposit and to recover the cost of the filing fee from the Landlord.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that the Tenant hand delivered the Notice of Hearing documents and copies of his documentary evidence to the Landlord's agent on February 11, 2015, at the Landlord's place of business.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The parties agreed on the following facts:

- This tenancy ended on August 31, 2014. The Tenant provided the Landlord with his forwarding address in writing on July 30, 2014.
- The Tenant paid a security deposit in the amount of \$450.00 on June 19, 2013.
- Condition Inspection Reports were completed at the beginning and the end of the tenancy.

The Tenant gave the following testimony:

The Tenant testified that he did not receive the security deposit within 15 days of the end of the tenancy.

The Tenant submitted that he asked the Landlord about his refund on September 24, 2014, because he had not yet received it, and the Landlord told him that it had been mailed out (cheque #693). The Landlord suggested that the Tenant wait a few more days and if the cheque didn't come, the Landlord would be cancel cheque #693 and issue another cheque. The Tenant provided a copy of an envelope from the Landlord, which is date stamped September 16, 2014.

The Tenant testified that he received another cheque from the Landlord in the amount of \$450.00 (cheque #698) but that he has not yet cashed it.

The Landlord's agent gave the following testimony:

The Landlord's agent stated that he delivered cheque #693 to a postal outlet at approximately 10:30 a.m. on September 15, 2014, along with 5 other refund cheques for other rental units. The Landlord's agent testified that the date stamp on the envelope is the date that Canada Post processed the mail, and not the date that he provided the mail to the postal outlet.

The Landlord's agent testified that cheque #693 had been cancelled by the Landlord, but cheque #698 could still be cashed.

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

Section 38(8) of the Act provides that a landlord must either mail the deposit to the tenant or give the deposit personally to the tenant. In this case, the Landlord chose to mail the deposit to the Tenant.

The Act does not provide that a *Tenant must receive* the deposit within 15 days, it provides that the *Landlord must provide* the deposit within 15 days. I accept the Landlord's agent's explanation with respect to the date stamp on the envelope and his testimony that the deposit was mailed on September 15, 2014, which is within the time limit for its return.

Therefore, I dismiss the Tenant's application. The Tenant may cash cheque #698.

Conclusion

The Tenant's application is dismissed. The Tenant may cash cheque #698, representing return of the security deposit.

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: March 05, 2015

Residential Tenancy Branch

