



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on February 18, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2013. The tenancy ended on January 31, 2015. The rent was \$1225 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$612.50 and a pet damage deposit of \$612.50 for a total of \$1250 at the start of the tenancy.

The tenancy ended on January 31, 2015.

The tenant(s) provided the landlord with their forwarding address in writing on January 22, 2015.

On February 13, 2015 the tenants e-mailed the landlord inquiring about the return of the security deposit. The landlord responded saying they had to February 23, 2015 to return the deposit. The landlord had mistakenly thought they have 15 business days and holidays and weekends were not to be included.

The tenant responded by pasting a provision of the Residential Tenancy Guidelines in the e-mail and stating that if the deposits are not returned he would be filing an Application for Dispute Resolution on Tuesday, February 17, 2015.

The Accounts Receivable employee testified that on February 13, 2015 she sent an e-mail to the tenant saying they would be mailing the cheque refund today. She further testified the refund cheque was placed in the mail on February 13, 2015. The tenant responded to that e-mail saying they have 14 days (incorrect statement) to send the deposit and asking that it be sent by Express Mail.

On February 19, 2015 the tenants e-mailed the landlord saying they had not received the damage deposit and confirming they had served the landlord with an Application for Dispute Resolution which sought a doubling of the deposit. The e-mail states "It is still your obligation to give us our deposit back which is \$1225. We do have bills due so if at all possible can I come to the office to pick up the cheque and final papers?"

On February 20, 2015 the Accounts Receivable employee e-mailed the tenants confirming she had sent out the deposit refund cheque on Friday, February 13, 2015 to the forwarding address provided. It further stated "If you wish, we can stop the payment and re-issue a new cheque to you to settle the issue. If you insist on proceeding with the dispute resolution, we will have to wait for the Residential Tenancy Office (RTO) decision of the hearing to be held on April 21st."

The tenants responded with an e-mail on February 20, 2015 accusing the landlord of not sending the cheque. It also states "It is your obligation to send me the final inspection and damage deposit. I will not be manipulated in dropping this dispute. If you wish to punish me and not send me a cheque for your mistake, then that's on you."

The landlord produced evidence from four other tenants who were sent their refund cheques on February 13, 2015 and responses from them stating they received the cheques.

Law

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

....

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

...

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

The Residential Tenancy Act provides that a landlord must repay the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit and pet damage deposit totalling \$1225 at the start of the tenancy. I determined the tenancy ended on January 31, 2015. I further determined the tenants provided the landlord with their forwarding address in writing on January 22, 2015. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing.

The issue is whether the landlord has fulfilled its obligations in "repaying" the security deposit to the tenant with 15 days of the later of the end of tenancy or the date the landlord receives the tenants forwarding address in writing. The landlord testified she mailed the cheque to the tenant on February 13, 2015 by ordinary mail. It would have been preferable if the landlord had documentary evidence to confirm this mailing such as a registered mail receipt. However, for the purposes of this decision I am prepared to accept the testimony of the landlord even though documentary evidence has not been produced to support this testimony.

The landlord was advised by the tenant on February 19, 2015 he had not received the cheque and demanding the landlord return the deposit. In my view it is the landlord's obligation to repay the deposit. The tenant had not received the refund deposit cheque. I do not accept the submission of the landlord that they were not obliged to re-issue a new cheque because the tenant did not ask for one. I accept the testimony of the tenant which is corroborated by the e-

mail and the accounts receivable employee that the landlord was prepared to issue a new cheque if the tenants settled the issues and gave up their claim before the Residential Tenancy Branch. The tenants had a right to have their claim for the doubling of the deposit heard. The landlord did not have the right to withhold the refund cheque knowing it had not been received by the tenants. The landlord had an obligation to "repay" the security deposits within 15 days. It would have been easy for the landlord to put a stop payment on the first refund cheque (which had not been received by the tenant) and send a second cheque. In my view the landlord has breached this obligation by failed to reissue the security deposit cheque knowing the tenants had not received it.

As a result I determined the tenants have established a claim against the landlord for double the security deposit of the sum of \$2450.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$2450 plus the sum of \$50 in respect of the filing fee for a total of \$2500.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: April 21, 2015

Residential Tenancy Branch

