



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested return of double the security deposit less the sum previously returned and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord made a late evidence submission one day prior to the hearing. That evidence was not before me and was not submitted at least 7 days prior to the hearing. The landlord was able to provide testimony.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit paid?

Background and Evidence

The tenancy commenced in December 2013. Rent was due on the first day of each month. A security deposit in the sum of \$450.00 was paid.

The tenancy ended effective September 15, 2014.

There was no dispute that the landlord returned \$302.66 of the security deposit by way of a bank draft dated September 24, 2014. The tenants received that draft within days of the end of the tenancy.

There was no dispute that the landlord made deductions from the deposit that were not agreed to in writing by the tenants, at the end of the tenancy. Once the landlord realized they had made deductions that were contrary to the legislation they issued a second cheque in the sum of \$147.34. That cheque was mailed on September 29, 2014 to the tenants forwarding address given on September 15, 2015.

When the landlord then received the hearing documents they called the tenants to tell them the bank draft for the balance had been mailed. When the landlord did not hear anything further they believed the bank draft had been received and cashed.

The tenant had an express post envelope she received the day prior to the hearing. She opened that mail during the hearing to find a cheque issued in the sum of \$147.30. There was an envelope included with this mail that showed mail had been sent to the tenants on September 30, 2014. The envelope was marked by Canada Post as "not at this address...unknown."

The parties agreed that it appeared the landlord had mailed the balance of the security deposit to the tenants forwarding address within 15 days of the end of the tenancy. For some unknown reason the mail was returned to the landlord, but it did not arrive back to the landlord until just recently. Once the mail was returned the landlord issued another cheque which was successfully delivered. The tenant confirmed that the address on the September 30, 2014 mail was correct.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

There was no dispute that the landlord made an error when they made unauthorized deductions from the deposit and returned only a portion to the tenants. There was also no dispute that the landlord then returned the balance of the deposit to the tenants within 15 days of September 15, 2014.

I can find no fault on the part of the landlord in relation to the mail that was in the Canada Post system for months before it was returned to the landlord. It was only just prior to the hearing that the landlord received the September 29, 2014 cheque back in the mail. A new cheque was sent to the tenants at the same address and has been received.

Therefore, as the landlord did return the total sum of the security deposit within 15 days of September 15, 2014 I find that the claim for double the deposit is dismissed. Any problems with Canada Post delivery are no fault of the landlord.

Conclusion

The application is dismissed.

This decision is final and binding and 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 08, 2015

Residential Tenancy Branch

