



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened to address a claim by the tenant for an order compelling the landlord to return double her security deposit. Both parties participated in the conference call hearing and had opportunity to be heard.

At the hearing, the landlord asked for an adjournment to allow him to submit evidence. When asked why he had not submitted evidence in advance of the hearing, eh advised that he was unsure whether I would require it. I denied the request for an adjournment as the landlord had 5 months to submit his evidence and chose not to do so under the misguided belief that I would tell him what evidence to provide, despite having been given an instructional pamphlet from the Residential Tenancy Branch which clearly stated that he should submit any evidence on which he wished to rely in advance of the hearing.

Issue to be Decided

Is the tenant entitled to an order for the return of double her security deposit?

Background and Evidence

The following facts are not in dispute. The tenancy began on December 1, 2013. On November 16, 2013, the tenant and her co-tenant, ZL, each paid \$250.00 toward the security deposit. The tenant also paid \$100.00 in deposits for 2 entry fobs and a mailbox key. ZL vacated the unit midway through the tenancy and M moved into the unit with the tenant. The landlord collected a \$275.00 security deposit from M and when both M and the tenant vacated the rental unit in November 2014, the landlord returned \$275.00 to M. On the last day of the tenancy upon receiving keys and the access fobs, the landlord asked the tenant what he owed her for deposits on the fobs, to which she replied that he owed \$150.00. The landlord paid her this amount in cash.

Shortly after the tenancy ended, the tenant emailed her forwarding address to the landlord but misprinted the address, omitting one number. Almost immediately thereafter, the landlord obtained a bank draft for the tenant's portion of the security deposit and mailed it to the tenant at the address she provided. The tenant did not receive the letter and on December 31 provided the correct address to the landlord. The landlord contacted the bank from which he had obtained the bank draft and asked them to investigate to determine whether the draft had been cashed. The bank's investigation took several months to complete during which time the tenant filed her application for dispute resolution for the return of double the security deposit. The bank eventually cancelled the bank draft as they found it had not been cashed and the landlord testified that he is willing to return the tenant's deposit.

In dispute are the following issues. The landlord claimed that when ZL vacated the unit during the tenancy, he returned to her the \$275.00 deposit that she had paid at the beginning of the tenancy. The tenant claimed that she spoke with ZL who informed the tenant that the landlord had not returned her portion of the security deposit.

The landlord claimed that he overpaid the deposits paid by the tenant by \$50.00 as the tenancy agreement clearly shows that she paid only \$100.00 for deposits and on the last day of the tenancy he paid her \$150.00. The tenant claimed that when M moved into the unit, M paid the landlord \$50.00 for a parking pass and she collected that refundable deposit on behalf of M. The landlord testified that he has no record of having collected a parking pass deposit from M.

The tenant also seeks to recover the \$50.00 filing fee paid to bring her application.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must "repay" the security deposit to the tenant or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

The tenant acknowledged that she gave the landlord an incorrect forwarding address and did not dispute that the landlord mailed a bank draft to that address. When the landlord obtained the bank draft, the amount of the draft was deducted from his bank account. I find that the landlord met his obligation under section 38(1) of the Act as I find that the act of mailing the bank draft to the address provided constituted repayment under the meaning of the Act. The bank draft did not reach the tenant for one reason:

the tenant gave the landlord an incorrect address. I find that the tenant is not entitled to double her security deposit as it cannot be said that the landlord failed to repay the deposit. Although the landlord now has the deposit back in his hands as a result of the bank having completed its investigation cancelling the draft and placing the money back into the landlord's bank account, the bank's actions were not complete until after the tenant filed her application for dispute resolution. I find that the landlord was reasonable in not returning the deposit after the tenant had filed her application and instead waiting to present his defence at the hearing.

I have found that the tenant is not entitled to double her security deposit, but as the landlord has not filed a claim against it and the tenant has not agreed that the landlord is entitled to retain any part of the security deposit, I find that the tenant is entitled to recover the base amount of the deposit. The question now before me is whether the tenant is entitled to recover just the amount she paid or both hers and that of her roommate, ZL.

Usually where two tenants rent a unit under the same agreement, they are jointly and severally liable for the tenant obligations under the agreement and the landlord may return the entire deposit to one party and thus fulfill his obligations with respect to returning the deposit. However, in this case, the tenants not only paid separate deposits, but ZL vacated the unit partway through the tenancy and the tenant agreed that when M, the new co-tenant moved in, she paid a security deposit which was returned to her at the end of the tenancy. The tenant provided hearsay testimony that ZL had told her that the ZL did not receive her part of the security deposit back from the landlord. However, the landlord testified that he did pay \$275.00 to ZL when she vacated the rental unit. I must give greater weight to the direct testimony of the landlord than I do to the hearsay testimony of the tenant. I find that the landlord has already returned \$275.00 of the deposit to ZL and therefore only the tenant's portion of \$275.00 remains outstanding.

The landlord asked that I apply the \$50.00 overpayment of the fob and key deposits to the amount owing for the security deposit. Although the tenant claimed to have told the landlord that he owed her \$150.00 in deposits because she was including a \$50.00 payment to tenant M, the landlord denied that he accepted any deposit money from M. Again, I must give greater weight to the direct testimony of the landlord than I do to the hearsay testimony of the tenant. I find that the landlord overpaid the tenant by \$50.00 when returning the fob deposits and therefore find that the amount owing by the landlord to the tenant must be reduced by this amount. I note that if M wishes to file a claim for the return of deposits to the landlord, she may do so under her own name.

I award the tenant \$225.00. As the tenant caused the delay in the return of the deposit by failing to provide an accurate address to the landlord, I find she should bear the cost of the filing fee paid to bring this application.

I grant the tenant a monetary order under section 67 for \$225.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that the landlord believes the tenant caused damage to the rental unit. The landlord may not unilaterally withhold whatever sum he feels he is entitled to, but is free to file an application for dispute resolution to claim repair costs against the tenant.

Conclusion

The tenant is granted a monetary order for \$225.00.

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: October 30, 2015

Residential Tenancy Branch

