



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant filed July 16, 2015 under the *Residential Tenancy Act* (the Act) for a Monetary Order for the return of the security deposit and compensation under **Section 38**. The application is inclusive of an application for recovery of the filing fee for this application.

Both, the tenant and the landlord were represented at today's hearing. Both parties submitted evidence to this matter and agreed they each received the evidence of the other. The parties were permitted to present any relevant evidence in testimony. The parties were also provided opportunity to discuss their dispute with a view to settling this matter, to no avail. The hearing proceeded on the merits of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to double the monetary amounts claimed?

Background and Evidence

The undisputed relevant facts of the parties before me are as follows.

The tenancy began July 01, 2014 as a fixed term tenancy for 1 year ending June 30, 2015. Rent was \$2450.00 payable in advance on the 1st of every month. The landlord collected a security deposit of \$1225.00 and a pet damage deposit of \$1225.00 at the outset of the tenancy. The tenancy ended at which time the parties agreed the landlord would retain a portion and return the balance of \$1856.50.00. The landlord and tenant agreed in testimony the landlord received the tenant's forwarding address in writing on July 01, 2015.

The landlord provided testimony they mailed a cheque for the balance of the deposits on July 14, 2015. The tenant provided a copy of the cheque dated July 14, 2015 into evidence. The tenant testified they received the cheque July 17, 2015. The parties each provided a series of e-mail exchanges dated July 14 and July 16, 2015.

The landlord argued the Act does not define whether a deposit must be sent or received within 15 days.

Analysis

The onus is on an applicant to prove their claim on a balance of probabilities. They must provide sufficient proof to support their claim. On preponderance of the relevant evidence for this matter, and on balance of probabilities, I find as follows.

Section 38(1) of the Act respecting deposits, in relevant parts, provides as follows (**emphasis mine**)

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord **receives** the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Subsection **(8)** states the landlord must use specific method(s) for repaying a deposit, and it states:

38 (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.

In regards to the argument respecting the definition of timelines, I find that the Act is not ambiguous. Relevant to this matter, Section **38** is clear that *after* receiving the tenant's

forwarding address on July 01, 2015 the landlord is obligated to repay the tenant the balance of their security deposit inside of, or within, 15 days. The landlord was required to do this no later than on July 16, 2015 utilizing a method prescribed in Section 88 (c),(d),(f) or giving it personally to the tenant: that is, repay by *sending* it by mail, *leaving* it in a mailbox / mail slot, or *giving* it to the tenant. The landlord chose to repay the deposit by *sending* it by mail, and the evidence, on balance of probabilities, is this occurred on or before July 16, 2015, as the tenant received the landlord's cheque July 17, 2015.

I find the tenant's deposit, by way of landlord's cheque in the amount of \$1856.50 dated July 14, 2015, was sufficiently repaid to the tenant in accordance with Section 38 of the Act. I find the tenant has been compensated the total amount owed to them in accordance with the Act. As a result of all the above the tenant's application is **dismissed**.

Conclusion

The tenant's application has been **dismissed**.

This Decision is final and binding on both parties.

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: December 09, 2015

Residential Tenancy Branch

