



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MELECTRA ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord's agent and the landlord attended the conference call hearing, although the landlord left the hearing before it concluded. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of the tenant's evidence. The tenant testified that she did not receive evidence from the landlord. The landlord testified their evidence was sent by registered mail on February 04, 2016. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the landlords evidence documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2013. This was a fixed term tenancy for a year, thereafter, reverting to a month to month tenancy. Rent for this unit was \$500.00 per month due on the 1st of each month. The tenant paid a security deposit of \$250.00 at the start of the tenancy.

The tenant testified that during the move out condition inspection conducted with the landlord's agent, the landlord's agent was not happy with the condition of the unit. The tenant disagreed with this and stated it was no more than normal wear and tear. The tenant referred to the move out inspection report on which the tenant has documented that she disagreed with the condition noted of the unit. The tenant testified that she also wrote to the landlord and disagreed with the finding on the report and asked the landlord to return the security deposit to the tenant's address provided at the move out inspection on July 31, 2015.

The tenant testified that on August 04, 2015 she received an email from the landlord's agent stating the landlord would be deducting \$82.00 for damage to the unit from the security deposit. The tenant testified that she has never given the landlord permission to keep all or part of the security deposit and as the landlord did not return the security deposit within 15 days the tenant seeks to have the security deposit doubled. The tenant agreed that she has since received the amount of \$250.00 back from the landlord on September 10, 2015.

The landlord's agent testified that she conducted the move out inspection with the tenant and found some staining on the walls which would have to be sanded and repainted. The landlord's agent testified that she decided there should be a deduction of \$82.00 for this work and emailed the tenant about this on August 04, 2015. The landlord's agent testified that after she sent the information off to the landlord, the landlord decided it was not worth filing an application to keep the \$82.00 so they then asked the landlord's bank to issue a cheque to the tenant for the full amount of the security deposit. The landlord's agent testified that a cheque was issued and sent on August 04, 2015 for \$250.00 by the landlord's bank to the tenant as the bank act on behalf of the landlord as he is out of the country.

The landlord's agent testified that it was not until September that they received a letter from the tenant saying she had not received her security deposit. The landlord checked with the bank and found that the cheque issued to the tenant had not been cashed. The landlord's bank put a stop on that cheque and a money order was sent to the tenant for the full security deposit of \$250.00. This was cashed by the tenant on September 10, 2015. The landlord's agent testified that if the first cheque, which was sent to the tenant within 15 days, was lost by Canada Post then this is out of the landlord's control and the tenant's application to recover a further \$250.00 should be denied.

The tenant testified that the landlord's evidence is contradictory. On August 04, 2015 the landlord emailed the tenant to say they were deducting \$82.00, but then the landlord sends a cheque on the same day for the full security deposit.

The landlord again referred to their documentary evidence from the bank showing the cheque was issued for \$250.00 on August 04, 2015.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find the landlord's agent's testimony and documentary evidence more compelling. The landlord's evidence shows a cheque was issued by the landlord's bank for \$250.00 on August 04, 2015. There is no reason why the bank would not then send this cheque to the tenant. If the cheque was not received by the tenant then this is out of the landlord's control. I find therefore the landlord did comply with s. 38(1) of the *Act* and returned the security deposit within the 15 allowable days after the end of the tenancy.

As the landlord sent a new cheque to the tenant for the security deposit as soon as the tenant notified the landlord that she had not received the security deposit then I find the security deposit has been returned to the tenant. The tenant's application to have the security deposit doubled is therefore dismissed.

As the tenant's application has no merit I find the tenant must bear the cost of filing her application.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 02, 2016

Residential Tenancy Branch

