



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for the security deposit to be doubled. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, the parties were asked to provide complete dates when providing relevant dates during their testimony. I emphasized that dates were a critical issue in this case and that saying "the 11th" for example was insufficient. Both parties appeared to struggle with this request which made for an inefficient use of hearing time when the parties had to be asked multiple times in order for me to hear a complete date.

Issue(s) to be Decided

Has the tenant established an entitlement to doubling of the security deposit?

Background and Evidence

The parties were in agreement that the tenant paid a security deposit of \$500.00. As to the start date of the tenancy, the landlord originally stated the tenancy agreement was signed September 22, 2014 for a tenancy set to begin October 1, 2014. Then the landlord changed her testimony to say the tenancy agreement was signed September 2, 2014 for a tenancy set to commence September 1, 2014. Neither party had provided a copy of the tenancy agreement as evidence for the hearing; however, the tenant was in agreement with the second set of dates provided by the landlord. As for the monthly rent the landlord testified that the monthly rent was \$1,075.00. The tenant stated that she thought it was \$1,025.00 but then conceded the landlord's figure was likely accurate. As to the end of the tenancy I heard that the tenancy ended August 31, 2015 and the parties met on September 1, 2015 to complete paperwork and the tenant provided the landlord with her forwarding address in writing on that date.

The parties were in agreement that on September 18, 2015 the tenant sent a text message to the landlord enquiring about the security deposit. The landlord responded to the tenant via text message to say the refund had been mailed to her. Both parties referred to text messages during the hearing but neither party had provided copies of the messages as evidence for my review.

The parties had no further contact with each other before the tenant filed her application on September 21, 2015. When the landlord received the hearing documents in the mail on September 28, 2015 the landlord contacted the tenant again via text message to confirm the tenant's forwarding address was correct. The tenant confirmed that it was. The landlord then sent an e-transfer of \$500.00 to the tenant's mother's email address which was received September 29, 2015. The landlord stated that she cancelled the cheque sent to the tenant. The tenant stated that she received the e-transfer through her mother and shortly thereafter the cheque arrived in the mail. The tenant stated that she did not attempt to cash the cheque because she already had received the funds via e-transfer.

The landlord testified that she had sent refund cheque to the tenant via regular mail. The landlord's testimony as to the date it was sent varied during the hearing. At first she said the cheque was sent October 11, 2015. Then she said September 11, 2015. She also said 3 or 4 days before September 15, 2015.

The landlord's witness, her boyfriend, testified that he was with the landlord when the refund cheque was put in the mail at a gas station.

The tenant also provided varying dates during her testimony. At first she said she received the refund cheque on September 29, 2015 and then she said she received it on October 3, 2015. The tenant was asked whether she still had the cheque and envelope containing the cheque. The tenant stated that she threw away the envelope because the post-mark date was not readable and she ripped up the cheque and disposed of it.

The landlord questioned the tenant's motives for making this application. The tenant stated that she did not hold onto the cheque as she is a single mother and had been eagerly awaiting the cheque so that she could pay a security deposit to her current landlord. The landlord submitted that she was motivated to refund the security deposit to the tenant to get the tenant "out of my hair" since the tenancy had been unsuccessful and she wanted no more to do with the tenant.

Analysis

Under section 38(1) of the Act, the landlord's time limit repaying a security deposit to a tenant is 15 days after the tenancy ends or upon receiving the tenant's forwarding address in writing, whichever date is later. In this case, the tenancy ended August 31, 2015 and the tenant provided a forwarding address to the landlord in writing on September 1, 2015. Accordingly, I find the landlord had until September 16, 2015 to repay the security deposit.

Repaying a security deposit through regular mail is an acceptable way to send the refund pursuant to service provisions under section 88 of the Act providing the date the mail was sent is more difficult than say registered mail. In any event, it is undisputed that the landlord mailed a full refund to the tenant and the tenant did eventually receive it in the mail.

Since section 38(1) of the Act specifically uses the word "repay" which is a derivative of the word "pay", as opposed to a requirement that the tenant must "receive" a refund by a specific date, I find the critical issue to determine is when the landlord is considered to have paid the security deposit to the tenant. The Act does not define the words "pay" or "repay". At common law, a debtor is considered to have paid an amount when the payment is mailed. Evidence used to determine when something is mailed is often the post-mark date on the envelope.

In this case, I found the testimony of both parties, especially with respect to dates, to be not overly reliable considering the testimony of both parties changed during the hearing. It was also apparent to me that the parties had an acrimonious relationship at the end of the tenancy which may explain why each party was quick to point to the other party as be the reason for this dispute. However, another possibility exists, which is that both parties have been truthful and that the landlord did mail the refund on or before September 16, 2015 and for reasons associated to the mail delivery system the refund cheque was slow in reaching the tenant. Accordingly, I find that the best independent evidence as to when the refund cheque was mailed to the tenant may have been the envelope containing the refund cheque, and to a lesser extent the cheque itself. However, the tenant discarded both items and deprived me and the landlord the opportunity to review the evidence.

Of further consideration is that the landlord was very quick to respond to the tenant's text message enquiring about the security deposit and very quick to not only respond to the hearing documents by confirming the tenant's address to be correct but to also send payment again without delay.

In light of all of the above, I find it reasonably likely that the landlord did mail the security deposit to the tenant on or before September 16, 2015 as she testified and given the tenant's decision to destroy evidence that may contradict that I am unsatisfied that the tenant is entitled to doubling of the security deposit. Therefore, I dismiss the tenant's application.

Conclusion

The tenant's application has been dismissed.

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, 2016

Residential Tenancy Branch