



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application for return of double the security deposit. 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.

The tenant's application was amended to correct the rental unit address as he had erred in providing this information on the original application.

Issue(s) to be Decided

Is the tenant entitled to doubling of the security deposit?

Background and Evidence

The tenancy started on or about February 2012 with a former landlord. The tenant was required to pay rent of \$775.00 on the first day of every month. The tenant had paid a security deposit of \$387.50 which was transferred from the former landlord to the current landlords. The tenancy ended February 29, 2016. The tenant provided a forwarding address, in writing, to the landlords on February 29, 2016. The tenant did not authorize any deductions from the security deposit in writing.

The tenant seeks doubling of the security deposit on the basis he did receive a refund of the security deposit on or before March 15, 2016. The tenant also took issue that he did not receive a cheque on March 15, 2016 yet the cheque he did receive was dated March 15, 2016.

The tenant testified he had provided his sister's address as his forwarding address and when a refund cheque did not arrive at his sister's address by March 15, 2016 he went to the Advocate's office on March 16, 2016 to seek further assistance. The Advocate testified that she contacted the landlord on March 16, 2016, via email, and in response the landlord informed her that a refund cheque had been mailed to the tenant. The landlord also advised that another cheque would be issued to the tenant so that he may pick it up that same day. The tenant testified that a cheque for the full amount of the deposit was picked up and cashed by him on March 16, 2016. An envelope addressed to the tenant, from the landlord's business, arrived at his forwarding address on March 18, 2016 according to the tenant's sister. The tenant testified

that he did not open the envelope but took a photocopy of the envelope as evidence provided for this proceeding. The post-mark on the envelope appears to read 160315. The tenant acknowledged that it may contain a refund cheque.

The landlord testified that a refund cheque was issued to the tenant and put in the mail in the few days before March 15, 2016. Upon being contacted by the tenant's Advocate the landlord issued a second refund cheque for the convenience of the tenant. The landlord pointed out that the tenant's evidence shows that the first cheque was in the mail system no later than March 15, 2016.

Although the first refund cheque appears to have been mailed on or before March 15, 2016 and the tenant cashed a second cheque the landlord provided to him on March 16, 2016 but remains of the position that the security deposit should be doubled. The tenant's advocate questioned whether putting the first refund cheque in the mail is sufficient to meet the landlord's obligations under the Act.

The landlord submitted that the security deposit is considered repaid once it is out of the landlord's possession, which the first cheque was on or before March 15, 2016. The landlord was of the position that the landlords not only met their obligation to refund the security deposit within the applicable time limit but they went above and beyond in issuing a second cheque for the tenant for the tenant's benefit.

Analysis

The tenant has received a refund of the full amount of the security deposit but seeks doubling of the deposit. Section 38(6) of the Act provides that a landlord must pay the tenant double the security deposit if the landlord fails to comply with section 38(1). Accordingly, it is before me to determine whether the landlords complied with section 38(1) of the Act.

Section 38(1) of the Act provides:

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

(a) the date the tenancy ends, and

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

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[Reproduced as written with my emphasis underlined]

In the case before me, it is undisputed that the tenancy ended and the landlord was provided a forwarding address, in writing, on the same date: February 29, 2016. Accordingly, the landlords had until March 15, 2016 to comply with section 38(1) by either repaying the deposit to the tenant or filing an Application for Dispute Resolution to claim against it. The landlords in this case did not file an Application for Dispute Resolution to claim against the deposit but chose to repay it. As such, the critical issue to determine is: did the landlords repay the deposit within the time limit for doing so?

The tenant was largely focused on the date he “received” a refund cheque. However, it is important to point out that section 38(1) does not use the word “receive” in setting out the landlord’s time limit. The Act uses the words “repay” or “file” which do not carry the same meaning as “receive”. The Act further stipulates how the repayment is to be accomplished in section 38(8).

At the time in question, section 38(8) provided:

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*], or

(b) by giving the deposit personally to the tenant

Mailing a document to a tenant at the tenant’s forwarding address is a method of service provided under section 88(d) of the Act and in mailing a refund cheque to the tenant at the tenant’s forwarding address the landlord complies with a method of repayment provided under section 38(8)(a).

In this case, I accept the unopposed evidence that the landlord issued a refund cheque to the tenant for the security deposit that was put in an envelope addressed to the tenant at his forwarding address and put in a Canada Post mailbox before March 15, 2016 and that Canada Post was in possession of the envelope no later than March 15, 2016 as evidence by the post-mark on the envelope. I have focused on the actions of mailing the refund cheque to the tenant on or before March 15, 2016 in determining whether the landlords met their obligations as I consider the second refund cheque provided to the tenant on March 16, 2016 to be a replacement cheque that was for the tenant's sole benefit so that he would not have to wait for the mail to arrive at his sister's house (the tenant's forwarding address).

Since sections 38(1) and 38(8) provide a number of permissible actions that a landlord may undertake to fulfill its duty with respect to administering the security deposit, each permissible action may result in different date the tenant actually receives a refund or is served with an Application for Dispute Resolution. Accordingly, I find it reasonable to interpret section 38(1) to mean the landlord must perform one of the permissible actions on or before the time limit expires. I find the act of putting the refund cheque in the mail system on or before the deadline meets the landlord's obligation to perform one of permissible actions, including repaying the security deposit. Therefore, I am satisfied the landlords met their obligation under section 38(1) of the Act when they mailed the refund cheque to the tenant on or before March 15, 2016 and I dismiss the tenant's request for doubling of the deposit.

Conclusion

The tenant's application is 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: February 23, 2017

Residential Tenancy Branch