



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit, for an order that the landlord comply with the Act, regulation, or tenancy agreement, and for the return of the application filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to make submissions to me and to respond to the submissions of the other party.

Service of the tenant's application, notice of hearing, and supporting evidence was not at issue.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlord?

Should the landlord be ordered to comply with the Act?

Is the tenant entitled to recover the application filing fee?

Background and Evidence

It was agreed that this tenancy began in August of 2014 and ended on January 31, 2017. It was agreed that the tenant paid the landlord a security deposit of \$362.50, a pet damage deposit of \$200.00, and a \$50.00 key fob deposit, at the beginning of the

tenancy (for a total of \$612.50). It was further agreed that the landlord and tenant conducted a move-out condition inspection report on January 31, 2017, and that the tenant's forwarding address was included on that inspection report.

At the time that the move-out inspection report was completed the parties agreed that no amount was to be deducted from the tenant's security or pet damage deposits and that the key fob deposit would be refunded as well. However, by email dated February 7, 2017, the tenant authorized the landlord to deduct \$50.85 from her security deposit, which amount was related to outstanding utilities.

The landlord's agent testified that a cheque for the amount still owing to the tenant (\$561.85) was issued, or "cut," on February 15, 2017. He further testified that issuing a cheque for repayment of deposits on the 15th is standard practice for the management company. A copy of the cheque, dated February 15, 2017, was in evidence.

Also in evidence was a copy of the envelope containing the cheque which the tenant said that she received at her forwarding address. It has the landlord's office address as the return address and it is post marked by Canada Post on February 17, 2017. The landlord's agent stated that the cheque was mailed or placed in the outgoing mail on February 15 but Canada Post failed to pick it up until the 17 of the month.

The manager also said that if the tenant required the return of her deposits urgently she could have asked to pick the cheque up from the office, although he conceded that he had not offered the tenant this option. He said he was not aware that she required the monies urgently. The tenant testified that she did advise the landlord's office on February 6 or 7 that she required the monies urgently and she was advised the cheque would be issued as soon as possible for that reason.

The tenant brought her original application on February 17, 2017. In the details section she states: "I did not receive my damage and pet deposits back within the 15 days I was legally entitled to them. The last day of my tenancy was January 31st, at which point we conducted the inspection together and I was told I would be getting my deposits back in full. I also supplied my landlord with my forwarding address in writing. If possible, I would like double my deposits back. I really needed that money within the 15 days I was legal entitled to it."

The tenant received the landlord's cheque on February 21, 2017. On February 22, 2017 she amended her application, advising that she had received the balance of her security deposit the day before, but that she was still seeking double the deposits.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

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.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

Section further 38(8) states that, for the purposes of subsection 1(c), the landlord must use a service method described in s. 88(c), (d), or (f) or give the deposit to the tenant personally. Subsections 88(c), (d), and (f) describe regular mail and registered mail as acceptable service methods. However, they do not define at what point a landlord has met its obligation under s. 38(1)(c) to "repay" the tenant within 15 days of a specified date.

In this case the tenancy ended and the landlord received the tenant's forwarding address in writing on the same day: January 31, 2017. The manager submitted that the landlord met its obligations under the Act by issuing the refund cheque on the 15th and putting that cheque in the outgoing mail on the same date. I do not accept the

landlord's argument. Most landlords would not accept the same argument from the tenant. Under s. 26 of the Act a tenant "must pay rent when it is due under the tenancy agreement" and few landlords would accept that a tenant has actually paid rent when it is due by writing and mailing a cheque on the due date

Section 90(a) of the Act provides that a document given or served by mail is deemed to have been received on the fifth day after it is mailed. The most cautious approach would have been for the landlord to have mailed the cheque on February 10, 2017, five days before it was due. At the very least the landlord should have actually mailed the cheque out on the 15th. Canada Post has postmarked this envelope for February 17, 2017 and I can only conclude that the landlord failed to provide the cheque to Canada Post until that date.

Based on the Act and the agreed upon facts, I find that the landlord is in breach of the Act. Accordingly, I must order, pursuant to sections 38 and 67 of the Act, that the landlord pay the tenant double the security deposit and pet damage deposit and the \$100.00 filing fee. However, the fob fee is not a security or pet damage deposit under the Act and must not be doubled. Similarly, the tenant agreed to the utilities deduction from the security deposit and that amount should not be doubled. I find that the landlord owes the tenant an additional **\$611.65**, calculated as follows:

Security deposit	\$362.50
Pet damage deposit	\$200.00
Less agreed utilities deduction	-\$50.85
Amount owing after authorized reduction	\$511.65
Amount owing x 2	\$1,023.30
Less payment already returned (February 15 cheque)	-\$561.65
Plus fob fee	\$50.00
Plus application filing fee	\$100.00
TOTAL still owing	\$611.65

Conclusion

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under the Act.

Dated: April 19, 2017

Residential Tenancy Branch