



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MCLAY INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of a Tenant's Application for dispute resolution filed on August 17, 2017 wherein the Tenant sought return of double the security deposit and recovery of the filing fee.

The Tenant and a representative of the Landlord's called into the hearing which occurred by teleconference. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?
2. Should the Tenant recover the filing fee paid for his application?

Background and Evidence

The Tenant testified that the tenancy began May 1, 2017.

The Tenant stated that there was a fire at the rental building on July 6, 2017 and that as of July 15, 2017 all of the occupants were told to move out. He stated that he, and other occupants of the rental building, were assisted by the Salvation Army as they were unable to contact the Landlord.

The Tenant stated that on August 13, 2017 he provided the Landlord with his forwarding address by registered mail. He submitted that the Landlord should have returned his security deposit within 15 days of the end of the tenancy. The Tenant stated that he received the security deposit funds at the end of August.

The Landlord's representative, D.W., also testified. She provided the tracking number for the Tenant's registered mail package which she confirmed was sent to the Landlord on August 21, 2017 and received on August 22, 2017.

The Landlord returned the Tenant's security deposit by cheque sent on August 22, 2017. D.W. confirmed that she was informed the package was received by the Tenant on August 29, 2017.

Analysis

The Tenant applies for return of double his security deposit pursuant to section 38 of the *Act*, which reads as follows:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

As section 38(1) provides, the Landlord has 15 days from the later of the end of the tenancy or the receipt of the Tenant's forwarding address.

In the case before me, I find based on the Canada Post tracking number provided, that the Landlord received the Tenant's forwarding address on August 22, 2017; as such, the Landlord had until September 6, 2017 in which to return the funds. The evidence confirms the Tenant received his security deposit on August 29, 2017.

As the Landlord complied with section 38, the Tenant's request for double the security deposit pursuant to section 38(6) is denied. Having been unsuccessful, the Tenant's request to recover the filing fee is similarly denied.

Conclusion

The Landlord complied with section 38(1) of the *Act*, by returning the Tenant's security deposit within 15 days of receipt of the Tenant's forwarding address in writing.

The Tenant's request for return of double the deposit and recovery of the filing fee 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 19, 2018

Residential Tenancy Branch