



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP WEST COAST
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On October 17, 2017, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for double the security deposit pursuant to section 38 of the *Act*.

The Tenant attended the hearing, and C.H. and B.P. attended the hearing on behalf of the Landlord. All in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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 award for the return of her security deposit pursuant to section 38 of the *Act*?

Background and Evidence

The Landlord stated that the tenancy started on April 1, 2017 as a fixed term tenancy. Rent was established at \$1,000.00 per month, due on the first day of each month. A security deposit of \$500.00 was also paid. The Tenant confirmed these details.

All parties agreed that this tenancy ended when she vacated the rental unit by September 29, 2017. The Tenant stated that after she moved out, C.H. advised her that she would hold onto the security deposit until the strata fees for a bylaw infraction were

sorted out. C.H. advised her that a partial payment of her security deposit (\$400.00) was available for pick up from the office on October 2, 2017. The Tenant provided her forwarding address in a letter dated October 2, 2017 requesting the return of the balance of her deposit. C.H. referred to an email dated October 16, 2017 to the Tenant advising that the bylaw infraction was not sorted out so a cheque for the balance of the security deposit was mailed to the supplied forwarding address on that day. This cheque went uncashed so C.H. emailed the Tenant multiple times over the ensuing weeks to see if it was received; however, she did not receive a reply until November 10, 2017 when the Tenant stated that the cheque was not received. C.H. replied on November 13, 2017 stating that she would put a stop payment on the cheque and then direct deposit the balance of the security deposit into the Tenant's account that day.

Analysis

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

While C.H. alleged that a cheque was mailed to the Tenant on October 16, 2017, when C.H. was asked if there was proof that this cheque was mailed, she stated that she did not have evidence of this nor did she think to provide a copy of their ledger to prove that a cheque was issued on this date. However, I do have before me the affirmed testimony of C.H. that this cheque was mailed on October 16, 2017 to the forwarding address in writing; as well, multiple emails were directed to the Tenant, with respect to this issue. I do not find it reasonable that the Landlord would attempt to follow up multiple times on the status a cheque that was not cashed, if one was not mailed.

The Tenant stated that she did not receive emails or phone calls with respect to the cheque. In the hearing, C.H. stated that she had emailed the Tenant at a Hotmail email address that the Tenant provided when she moved out of the rental unit. The Tenant stated that she was not sure why this address was used, but she confirmed that this was also an email address of hers.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. While I understand this would be difficult to prove in the case before me, I do not find the Tenant's evidence that a cheque was not received after being mailed on October 16, 2017 by the Landlord to be compelling enough to outweigh the Landlord's evidence, on a balance of probabilities. In this case, I find that the Landlord has provided adequate evidence that the balance of the Tenant's security deposit was returned in full within 15 days of receipt of the Tenant's forwarding address in writing and that the Tenant was advised of this. Furthermore, as the undisputed evidence before me is that the Tenant has now received their deposit in full, I dismiss the Tenant's application.

Conclusion

I dismiss the Tenant's claim for a monetary award for double the security deposit.

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: June 11, 2018

Residential Tenancy Branch