



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit. There was no appearance on part of the landlord. The tenant testified that the hearing documents and evidence were served upon the landlord in person at the landlord's office within three days of making this application. I noted that the landlord had submitted documents to the Residential Tenancy Branch prior to the hearing and the tenant confirmed that she was also served with the documents. Accordingly, I was satisfied that the landlord was duly served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

The documentation provided by the landlord appears to indicate that the landlord may have filed for bankruptcy on September 27, 2016. The impact of the landlord's bankruptcy on the tenants' right to pursue return of the security deposit is uncertain and I proceed to consider whether the tenants are entitled to a Monetary Order under the *Residential Tenancy Act* (the Act).

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

On March 5, 2015 the parties executed a tenancy agreement for a tenancy set to commence on April 1, 2015 for a fixed term of six months. The tenants paid a security deposit of \$700.00 and were required to pay rent of \$1,400.00 on the first day of every month. Upon expiry of the fixed term the tenancy continued on a month to month basis until it ended on June 30, 2016. The landlord did not prepare a move-in or move-out

condition inspection report. The tenants did not give the landlord written authorization to retain any portion of the security deposit.

In July 2016 the landlord sent a cheque to the tenant in the amount of \$575.00 after making an unauthorized deduction of \$125.00 for "cleaning fees". The tenants were not in agreement with the deduction the landlord made and held onto the cheque without cashing it for quite some time as they considered how they wanted to proceed. Eventually, the tenants decided to deposit the cheque in April 2017 but at that point the cheque was stale-dated and it was dishonoured. On May 30, 2017 the tenant attended the landlord's office and met with the landlord in person to request a replacement cheque. The tenant orally provided the landlord with her forwarding address and the landlord wrote it down. A replacement cheque did not arrive and the tenant made several attempts to contact the landlord in June 2017. The landlord advised the tenant to deal with her husband since he was the registered owner of the property. The tenant proceeded to contact the landlord's husband but he hung up on her. On June 27, 2017 the tenant went to the landlord's office again to deliver her forwarding address to the landlord on a piece a paper and have it witnessed by a friend who also video recorded the encounter. The tenant provided a copy of the video recording to demonstrate the tenant personally delivered her forwarding address to the landlord, in writing. After receiving the forwarding address on June 27, 2017 the landlord did not issue a refund cheque and did not file an Application for Dispute Resolution to make a claim against the security deposit leading the tenants to file this Application for Dispute Resolution.

Evidence provided by the tenants included a copy of: the tenancy agreement; the partial refund cheque of \$575.00 that was dishonoured; text message communications between the landlord and the tenant; audio recordings of conversations between the landlord and the tenant; and, a video of the landlord receiving the tenants' forwarding address.

Analysis

Section 1 of the Act defines "landlord" as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

In this case, the landlord named in this decision signed the tenancy agreement, provided the tenants with possession of the rental unit, and dealt with the tenants with respect to tenancy related matters. Whether the named landlord was the registered owner of the property or acting as agent for the registered owner, I find the named landlord meets the definition of landlord under the Act. Accordingly, the landlord named in this decision remained obligated to comply with the obligations of a landlord as imposed upon landlords by the Act.

As provided in section 38(1) of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit pursuant to section 38(6) of the Act.

Pursuant to section 39 of the Act, a tenant has one year from the time the tenancy ended to provide the landlord with a forwarding address in writing.

In this case, I was not provided any information to suggest the tenants extinguished their right to return of the security deposit; and, I am satisfied by the unopposed evidence before me that the tenants did not give the landlord written authorization to make any deductions from the security deposit.

The tenancy ended on June 30, 2016 and it would appear the tenants had provided a forwarding address to the landlord, orally and via text messaging, at various times after the tenancy ended; however, the tenants also served the landlord with a forwarding

address on a piece of paper on June 27, 2017 which the tenant gathered video evidence to substantiate such. Accordingly, I find the tenants met their burden to prove that the landlord was provided a forwarding address in writing within one year of the tenancy ending.

The tenants also demonstrated that the landlord had provided them with a cheque in the amount of \$575.00 in July 2016 but in the absence of written authorization to make a deduction of \$125.00, the landlord violated section 38 of the Act by making an unauthorized deduction even if the cheque had been deposited and honored by the bank.

Having found the tenants proved that a forwarding address was provided to the landlord in writing on June 27, 2017, I find the landlord had 15 days from that date, or July 11, 2017 to either refund the security deposit to the tenants in the full amount or file an Application for Dispute Resolution to claim against it. Since the landlord did neither, I find the landlord violated section 38(1) of the Act and must now pay the tenants double the security deposit. Therefore, I award the tenants return of double the security deposit in the amount of \$1,400.00 as requested, plus recovery of the \$100.00 filing fee paid for this application.

In light of the above, I provide the tenant with a Monetary Order in the total amount of \$1,500.00 to serve and enforce upon the landlord.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$1,500.00 to serve and enforce upon the landlord.

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 07, 2018

Residential Tenancy Branch