



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VAN DYCK PROPERTIES LTD. and AMBER PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of the security deposit. The landlord did not appear at the hearing. Since there was no appearance on part of the landlord I proceeded to explore service of hearing documents upon the landlord(s).

The tenants testified that they took the hearing package to the manager at the residential property. The manager refused to take the documents from the tenants. The tenants then went to the post office and sent the hearing package to the landlord using the service address that appeared on the partial refund cheque they received and the condition inspection report. The tenants were unable to provide the registered mail tracking number during the hearing. I reserved my decision with respect to service and continued to hear from the tenants with a view to establishing their credibility. After hearing from the tenants in detail I found I was satisfied that they were credible and I accepted their testimony that they served the landlord via registered mail using the landlord's service address. Accordingly, I proceed to make a decision as to the tenants' entitlement to return of the security deposit.

After hearing from the tenants and reviewing their documentation I informed the tenants the landlord **must** pay a tenant double security deposit in certain circumstances and that they were entitled to doubling of the security deposit unless they expressly waived entitlement. The tenants did not waive entitlement to doubling of the security deposit. Accordingly, I have considered whether the tenants are entitled to a Monetary Order for double of the security deposit.

Issue(s) to be Decided

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

Background and Evidence

The tenancy started on May 1, 2016 and the tenants paid a security deposit of \$465.00. The monthly rent was originally set at \$945.00 but it increased to \$963.00 by the end of the tenancy. The tenancy ended on September 30, 2017.

The tenants participated in the move-in and move-out inspection with the landlord. the tenants provided their forwarding address on the move-out inspection report. The tenants did not authorize the landlords to make any deductions from the security deposit on the move-out inspection report. More than a month after their tenancy ended the tenants received a cheque dated October 12, 2017 in the amount of \$310.00 from the landlord at their forwarding address. The refund cheque was accompanied by a statement prepared by the landlord indicating the tenants had agreed to various deductions or charges and the tenants actually owed the landlord a net amount of \$310.00. The tenants did not cash the cheque as they were not in agreement was any deductions from their security deposit or that the agreed to compensate the landlord the amounts indicated on the statement.

Evidence provided by the tenants included a copy of: the condition inspection reports; the front and back of the partial refund cheque and the statement that accompanied the refund cheque; and, several text messages exchanged with the building manager.

Analysis

As provided in section 38 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.

Based upon the unopposed evidence before me, I am satisfied the tenancy ended and the landlord was provided a forwarding address in writing on September 30, 2017, as reflected on the move-out inspection report, the statement that accompanied the partial refund cheque and the refund cheque itself. I also accept that the landlord was holding a security deposit of \$465.00 based on the statement that accompanied the partial refund cheque.

The condition inspection report shows that the tenants did not authorize any deductions from the security deposit. Nor, was I provided any other documentation to establish the tenants had authorized the landlord to make deductions from their security deposit in writing at any other time. Accordingly, I find the landlord had until October 15, 2017 to either refund the full amount of the security deposit to the tenants 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 \$930.00 as requested, plus recovery of the \$100.00 filing fee paid for this application.

I further award the tenants recovery of the \$100.00 filing fee paid for this application.

In light of all of the above, I provide the tenants with a Monetary Order in the total amount of \$1,030.00 to serve and enforce upon the landlord.

Conclusion

The tenants are provided a Monetary Order in the amount of \$1,030.00 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: July 13, 2018

Residential Tenancy Branch