



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- authorization to obtain a return of the security or pet deposit, pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented by agent, L.V. (the “landlord”).

The landlord acknowledged receiving the tenant’s application for dispute resolution and evidentiary package. The tenant confirmed receipt of the landlord’s evidentiary package. I find all parties were duly served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of the security deposit? If so, should it be doubled?

Can the tenant recover the filing fee?

Background and Evidence

The tenant explained this tenancy began on October 1, 2017 and ended on July 30, 2018 after the parties had signed a mutual agreement to end tenancy. Rent was \$1,400.00 per month, and security and pet deposits of \$700.00 each were paid at the outset of the tenancy. These deposits were returned to the tenant following the conclusion of the tenancy.

The tenant argued she was entitled to a double the return of her pet and security deposit because the landlord failed to return these items to her within the fifteen day time period provided by section 38 of the *Act*. In her application for dispute, the tenant

wrote that she had provided the landlord with her forwarding address in writing on July 31, 2018 at 10:00 A.M.

The landlord explained a cheque dated August 14, 2018 was sent to the tenant by Canada Post Registered Mail on August 15, 2018. The tenant disputed this fact, arguing that in fact the cheque had been sent by Canada Post Regular Mail. As part of her evidentiary package, the tenant supplied a copy of the envelope which purported to show the cheque was mailed on August 17, 2018 by Regular Mail. In her evidence the tenant noted, "the attached cheque 'dated' August 14 was received on August 20 in an envelope which clearly shows receipt by the Canada Post processing plant on August 17." In her evidence, the tenant submitted a photocopy of the envelope containing her returned cheque, in the top right hand corner the numbers – 1808172226 are displayed with the tenant highlighting the numbers 180817 in support of her evidence.

The tenant disputed this date and supplied a letter from administrative assistant O.M. which said the cheque was "placed in the mail" on August 15, 2018.

Analysis

Section 38 of the *Act* states as follows:

Except as provided in subsection (3) [tenant fails to attend inspections] or (4)(a) [tenant surrenders deposit in writing], within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay, as provided in subsection (8), any security deposit or pet deposit to the tenant or make an application for dispute resolution claiming against the security or pet damage deposit.

Subsection (8) reads as follows:

The landlord must repay a deposit in the same way as a document may be served under section 88, by giving the deposit personally to the tenant, or using any form of electronic payment to the tenant, or transfer of funds to the tenant. Section 88(c) provides that a landlord may return a deposit by 'ordinary mail.' The question is therefore is whether the deposit was repaid to the tenant within 15 days permitted under this section.

During the hearing the parties agreed the tenancy ended on July 30, 2018 and the tenant's forwarding address was provided to the landlord in writing on July 31, 2018. The parties provided conflicting evidence related to the date on which the cheque

containing a return of the tenant's deposits was mailed. The tenant alleged the cheque was mailed on August 17, 2018, while the landlord provided evidence that the cheque was placed in the mail on August 15, 2018. The tenant submitted an envelope which she argued established August 17, 2018 as the date it was processed. A postal date stamp reflects the date on which an item placed in a postal collection box has reached the post office and is stamped. It follows that one cannot know with certainty that the postal date stamp has been placed on an item on the same day that it was placed in a post box. Furthermore, I find the stamp to which the tenant refers is inconclusive as to the date on which the item was mailed as simply contained a seemingly random group of numbers.

I find therefore that the tenant has failed to demonstrate that the landlord did not repay the deposit within 15 days of receipt of her forwarding address. I find the evidence supplied by the landlord supportive of the conclusion that the funds were returned in time. The landlord provided a cheque dated August 14, 2018 along with a letter from administrative assistant O.M. explaining this cheque was mailed on August 15, 2018. I am satisfied on the balance of probabilities that the landlord repaid the tenant's deposits by mailing it via ordinary mail to the tenant as permitted by sections 38 and 88(c) of the *Act* within 15 days of the tenant's providing the necessary address to which it could be sent.

Conclusion

I dismiss the tenant's application for a double the return of her pet and security deposit without leave to reapply.

The tenant must bear the cost of her own filing fee.

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: December 24, 2018

Residential Tenancy Branch