



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This Review Hearing was convened in response to a Review Consideration Decision dated March 13, 2019 that granted the Tenant a new hearing on its application pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. A Monetary Order for return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on July 1, 2018 and ended on August 31, 2018. During the tenancy rent of \$1,375.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$687.50 as a security deposit. The Landlord received the Tenant’s forwarding address on August 31, 2018.

The Tenant states that the Landlord returned by mail the full security deposit in the form of a cheque dated September 15, 2018. The Tenant states that she cannot recall the exact date of receiving the cheque but that the envelope containing the cheque was postmarked September 17, 2018. The Tenant states that she cashed the cheque shortly after receipt of the mail. The Tenant provides a digital photo of the envelope containing the cheque. The Tenant argues that since the Landlord failed to return the security deposit within 15 days of the end of the tenancy the Tenant is now entitled to return of double the security deposit.

The Landlord states that the cheque was mailed on September 13, 2018. The Landlord states that he is only guessing on the date of its mailing. The Landlord states that it could have been mailed on September 12, 2018 or even earlier. The Landlord states that the Tenant should have received it within a day or two. The Landlord states that the Tenant cashed the cheque on September 18, 2018. The Landlord states that the postmark date on the envelope provided by the Tenant as evidence cannot be read. The Landlord states that in the Review Consideration Decision the Tenant was found to have given fraudulent evidence in relation to not having received any of the security deposit and argues that this finding should be considered when considering the Tenant's oral evidence at this new hearing. The Landlords left the hearing a few minutes prior to its completion.

The Tenant states that it did not give evidence at the original hearing that the Landlord did not return the security deposit and that it only gave evidence that the Landlord did not return the security deposit within the 15 days of the end of the tenancy. It is noted that the Review Consideration Decision references the Tenant's application for a correction to the original decision in relation to the date of the end of the tenancy. This correction to the original decision was made on February 15, 2019.

Analysis

Section 38 of the Act provides that 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. The Tenant did not dispute the Landlord's evidence that the security deposit cheque was cashed on September 18, 2018. The Tenant's digital evidence of the post mark on the envelope containing the cheque cannot be read and cannot be considered as evidence of when the date the cheque was mailed or received by the Tenant. Although the Tenant gives evidence indicating that the original decision made an error in setting out that no security deposit was received as of the date of the original hearing I note that despite seeking and obtaining a correction to another part of the evidence contained in the original decision the Tenant sought no correction to this particular evidence. Finally, although the Landlord gave vague oral evidence of when the cheque was actually mailed, the Tenant gave no oral evidence of when the cheque was received.

The Tenant bears the burden of proof for its claim that the Tenant received the return of the security deposit later than allowed. For the above reasons and most particularly the Tenant's lack of evidence of when the security deposit was received by the Tenant, I find on a balance of probabilities that the Tenant has not substantiated that it received the return of the security deposit later than 15 days after the end of the tenancy. I therefore dismiss the claim for return of double the security deposit.

As the Tenant has already received the original amount of the security deposit, I also dismiss the Tenant's claim for return of the original amount of the security deposit and for compensation. As the Tenant's claims have not met with success I dismiss the

claim for recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Section 82 of the Act provides, inter alia, that an original decision may be confirmed, varied or set aside following a review of the original decision through the holding of a new hearing. Given that the above findings result in a different outcome from the original decision and order, I set aside the original decision and order and this review hearing decision prevails.

Conclusion

The original decision and monetary order dated January 21, 2019 is set aside. The Tenant's application 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 Act.

Dated: May 1, 2019

Residential Tenancy Branch