



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order for the Landlord to return all or part of the Tenant's security deposit of \$1,550.00.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

The Parties had an initial hearing on March 12, 2019, but the Tenant had sent her Application and documentary evidence to the Landlord at his prior address and he did not receive her package. As a result, I adjourned the hearing to allow the Tenant to re-

serve the Landlord with the Application and documentary evidence at his new address the he provided in the hearing, thereby giving the Landlord a chance to review the evidence prior to the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to the return of her security deposit, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed tenancy began on June 1, 2017, running to May 31, 2018, and then on a month-to-month basis thereafter. The Parties agreed that the Tenant paid a monthly rent of \$3,100.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$1,550.00, and no pet damage deposit.

In the hearing, the Parties said there was a move-in condition inspection done, but not a move-out condition inspection. The Tenant said that the Landlord did not give her a copy of a condition inspection report ("CIR"). No one submitted a copy of the move-in CIR.

The Tenancy ended in April 2018 when the Tenant moved out. The Parties did not raise any issues about the end of the tenancy. The Tenant said that she moved to Los Angeles for a few months and that she told the Landlord to leave the security deposit with the concierge at the rental unit. The Tenant said that a friend of hers moved into the rental unit after she left, and that this person would pick up the security deposit from the concierge.

In her Application, the Tenant said she is seeking double the security deposit from the Landlord, because: "This is my damage deposit I've been asking for since April 2018. I should get double since he ignores me and has taken so long to give my money back to me."

The Tenant's evidence is that she communicated with the Landlord mainly through texts, which I have set out below.

The Landlord said he mailed the Tenant cheque number 110 in August 2018. The Tenant provided a copy of a cheque the Landlord sent her in a text, as proof that the

cheque was sent and cashed. This cheque was made out to the Tenant, signed by the Landlord for \$1,500.00 dated August 9, 2018. The Landlord also provided a copy of the back of a cashed cheque with a bank stamp dated August 01, 2018. I find that the back of this cheque does not correspond with the front of cheque number 110, given the inconsistent dates. The Landlord did not submit a corresponding copy of the back of a cheque cashed after August 9, 2019.

The Tenant submitted a copy of her bank statement that showed she did not deposit a cheque for this amount in the first half of August.

The following sets out the text communication between the Parties from October 2018 through March 2019 regarding the Tenant's security deposit.

Fri, Oct 12, 10:00 AM

Tenant: Hi [Landlord]. Can you please email transfer me my damage deposit from [rental unit address]. I've been waiting since April when I moved out! And every time we're supposed to meet something comes up. I think this will be easier. My email is [email address] otherwise I'm going to have to file a dispute resolution form with the tenancy board. Thank you.

Sat, Oct 13, 12:58 AM

Tenant: My boyfriend is a lawyer and just mentioned that it is weird that we haven't resolved this yet. Any thoughts on when we can meet and take care of this ASAP?

Landlord: Hi [Tenant] You know how much I respect you and love you. I am out of country more than a month will back in mid December I was waiting to see you and meet with you even I came to [rental unit][No chance to see you will see you when I back Regards [Landlord]

Tenant: I also respect you. However my damage deposit is over 6 months overdue. This violates the rules of the tenancy act. My boyfriend does not understand why this has not been completed yet. Please can you email transfer or leave a check. He is in real estate law.

Undated

Tenant: Please can you email transfer or leave a check.

Landlord: I am miles a way No chance till I back no matter who is that you are too dear to me when I back you will get it.

Sun. Dec 23, 8:07 PM

Tenant: Hi [Landlord], just following up. You said you'd be back in December, can you drop off my deposit cheque sometime this week at the concierge at the [residential property]?! Thanks, hope you had a good trip. Happy holidays.

Undated

Landlord: You remember you told me you are with your friend house we arrange to meet each other it doesn't work you gave address I mailed there because I was going away I think the [neighbourhood] address

Tenant: Yes I remember that you were unable to meet that was in September. I didn't move to [the neighbourhood] until November. I only sent you the address in December when I texted you.

Landlord: Believe me I received text time I do not remember when I want to go away I mailed it really is done I M sorry you did not get it you know how much I love you and respect you.

Fri, Jan 18, 1:15 PM

Tenant: Hi [Landlord], following up about my security deposit again. I'll give you my address again [address and email provided].

Thu, Jan 31, 4:43 PM

Landlord: Hi [Tenant] I am working on it with checking with my bank to find out for you I have copy of cheque I mail it to you. Regards [Landlord]

Thu, Jan 31, 7:32 PM

Tenant: Yes please if you could mail it ASAP. I've been waiting awhile and could use the money! Thank you [Landlord]

Landlord: I will

Undated

Landlord: Hi dear [Tenant] This the copy that I received and the evidence of

cash the cheque on August, 9 2018. Thanks, [Landlord]

Tenant: Where did you send this? Because I never received it or cashed it. I have no bank records of depositing it.
Read 2019-02-04

Mon, Feb 25, 1:06 PM

Landlord: It is in the mail.

Tue, Mar 19, 4:39 PM

Tenant: [Landlord], You sent me a cheque for \$1550 and then the bank said it had been cancelled. I will have the evidence for arbitration dropped off this week.

Landlord: This is the second cheque I wait for a month No cashed After hearing I cancelled. I didn't want again some other person cash it. That is the reason If you are in town come and see me no need for anything you know I respect you and love you I have lot of evidence. But I do not have any problem with you. Thanks [Landlord] Give me a call let put together.

Analysis

The texts show that the Landlord sent the Tenant a cheque for the security deposit in February 2019, which I find indicates that the Landlord acknowledged that he had not paid the Tenant back yet at this point; however, he also acknowledged that he cancelled the cheque before the Tenant could cash it.

Section 38 of the Act provides that a landlord must return deposit(s) or apply for dispute resolution within 15 days of the later of the end of the tenancy and the date the forwarding address is received in writing. If a landlord fails to repay the deposit(s) or apply for dispute resolution within the 15 days, the landlord is liable under section 38(6) to pay the tenant double the amount of the deposit(s). There is no evidence before me that the Landlord was entitled to withhold all or a portion of the deposit, pursuant to section 38(3) and 38(4) of the Act.

The Tenant's testimony is that she originally told the Landlord to leave a cheque with her security deposit at the concierge of the rental unit property in April 2018; however,

she did not provide evidence that she communicated this request in writing, as is required under section 38(1)(b) of the Act.

The text evidence indicates that the Tenant provided the Landlord with a text message with her forwarding address in December 2018, although the specific day of the month is not set out, but it was prior to December 23. Accordingly, I find that it was provided by December 22, 2018 at the latest.

I find that the text evidence establishes that the Parties communicated back and forth via text prior to this, therefore, I find on a balance of probabilities that the Landlord received the Tenant's forwarding address in this manner by December 22, 2018, at the latest.

According to section 38(1), the Landlord had until January 6, 2019, to return the Tenant's security deposit or to apply for dispute resolution, neither of which he did. Accordingly, I find that the Tenant is entitled to the return of double the security deposit from the Landlord.

The Landlord currently holds the security deposit in the total amount of \$1,550.00 and is obligated under section 38(6) to return double this amount to the Tenant. There is no interest payable on the security deposit under the regulation. I, therefore, order the Landlord to pay the Tenant double the security deposit in the amount of **\$3,100.00**.

As the Tenant is successful in her Application, I also award her the recovery of the \$100.00 filing fee pursuant to section 72 of the Act.

I grant the Tenant an order under sections 38, 67, and 72 of the Act for a monetary order of **\$3,200.00**, which represents double the security deposit and recovery of the filing fee.

Conclusion

The Landlord did not return the Tenant's security deposit within 15 days of the later of the end of the tenancy and the date on which he received the Tenant's forwarding address. Accordingly, pursuant to section 67 of the Act, the Landlord is ordered to pay double the security deposit in the amount of \$3,100.00 to the Tenant. The Tenant is also awarded recovery of the \$100.00 Application filing fee. The Landlord is ordered to pay the Tenant **\$3,200.00**.

The Tenant is provided with a monetary order according to these terms. The Tenant is provided with this order, which she must serve on the Landlord, as soon as possible. Should the Landlord fail to comply with this order, the order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 12, 2019

Residential Tenancy Branch