



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 in response to an application made November 7, 2019 by the Tenant for an order for the return of double the security deposit pursuant to section 38 of the *Residential Tenancy Act* (the “Act”). 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?

Background and Evidence

The following are agreed facts: the tenancy started on November 21, 2012 and ended on September 30, 2019. At the outset of the tenancy the Landlord collected \$375.00 as a security deposit. The Landlord received the Tenant’s forwarding address on October 14, 2019. There was no agreement authorizing the Landlord to retain the security deposit and the Landlord made no application to claim against the security deposit.

The Tenant states that the Landlord did not return the security deposit. The Landlord states that it did return the security deposit by e-transfer on October 28, 2019. The Landlord states that the Tenant accepted that deposit on the same day. The Landlord provides a copy of an email notice of the e-transfer dated October 28, 2019. The heading for the email sets out that the Tenant accepted the money transfer.

The Tenant states that it checked its banking information while on this conference call and that no deposit for \$375.00 was made on October 28, 2019. The Tenant states that if the money had been received the Tenant would not have attended the hearing.

The Tenant states that no evidence was received from the Landlord and that the Tenant therefore did not know the Landlord gave evidence of having returned the security deposit. The Tenant argues that as a result it could not have known to provide its banking documents. The Landlord states that its evidence package was sent to the Tenant by registered mail on November 26, 2019 and that the Tenant received and signed for it on November 28, 2019. The Tenant states that it did receive registered mail on that date but that it contained a letter from a foundation in relation to raising money. The Tenant states that there is no return address on that envelope. The Tenant states that it thought perhaps the mail was fraud.

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. Section 38(8)(c) of the Act provides that the landlord must repay a deposit by using any form of electronic payment to the tenant or transfer of funds to the tenant. Although the Landlord did not provide supporting evidence of having sent the security deposit by e-transfer, I accept the evidence of the receipt of the e-transfer by the Tenant to find on a balance of probabilities that it was sent. Although the Tenant's evidence is that the Landlord's evidence package was not collected, I consider that this evidence did not hold a ring of truth. Given the Landlord's postal evidence I find on a balance of probabilities that the Landlord did serve the Tenant with its evidence containing the Landlord's submissions that the security deposit was returned. As such the Tenant had opportunity to provide banking evidence to counter the Landlord's evidence of having

sent the security deposit back to the Tenant. Given the agreed evidence of the date that the Landlord received the Tenant's forwarding address, the Landlord's evidence of the e-transfer to the Tenant and considering that the Tenant bears the burden of proof, I find on a balance of probabilities that the Tenant has not substantiated that the security deposit was not returned within the time required. For these reasons I dismiss the Tenant's claim for return of the security deposit and in effect the Tenant's application is dismissed in its entirety.

Conclusion

The 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: March 25, 2020

Residential Tenancy Branch