



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STEMICKISS PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied for the return of double their security deposit, plus the recovery of the cost of the filing fee.

The tenant and the owner for the landlord company (landlord) attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their documentary evidence, if the party submitted documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. In addition, the tenant confirmed that they understood that a monetary order would be served by email to the tenant only for service on the landlord.

Issues to be Decided

- Is the tenant entitled to the return of double their security deposit under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 12, 2012 and reverted to a month to month tenancy after June 30, 2013. The parties confirmed that by the end of the tenancy, the monthly rent was \$1,220.65 per month and was due on the first day of each month. The parties confirmed that they paid a security deposit of \$525.00 at the start of the tenancy.

The tenant provided a copy of their written forwarding address, which is dated July 26, 2019 and is listed on the tenant's one-month notice to end the tenancy, effective August 31, 2019. The tenancy ended on August 31, 2019, which is the date listed on the tenant's notice to end the tenancy. The landlord confirmed that they received the July 26, 2019 one-month written notice from the tenant and that it listed the tenant's forwarding address in writing.

The landlord testified that on September 25, 2019, the landlord mailed the tenant a cheque in the amount of \$525.00 for the return of their security deposit. The tenant denied that any such cheque was ever received from the landlord. The landlord then testified that a second cheque in the amount of \$525.00 was mailed to the tenant with the post-dated rent cheques from the tenant on October 9, 2019, and that the tenant did not cash that cheque as they had already filed for the return of double their security deposit.

The landlord testified that they thought they had one-month to return the tenant's security deposit.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, I find the second cheque mailed to the tenant that was not cashed by the tenant is now stale-dated as it is now over six months since it was issued.

Secondly, having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Emphasis added]

Given the above, even though there is no copy of the first cheque from the landlord to the tenant dated September 25, 2019, I find the landlord failed to either claim against the tenant's security deposit or return the full security deposit of \$525.00 within 15 days of August 31, 2019, which is the end of tenancy date. Under section 38 of the Act, the landlord has 15 days to return the tenant's security deposit from the **later** of the end of tenancy or the written forwarding address and I find in the matter before me, as the written forwarding address was dated July 26, 2019, I find the later date is the end of tenancy, which was August 31, 2019. Therefore, I find the landlord had until September 15, 2019 to return the tenant's security deposit, and based on the landlord's testimony, they did not do so until September 25, 2019, which is 10 days too late.

Therefore, I find the landlord breached section 38(1) of the Act and I find the tenant is entitled to the return of **double** their \$525.00 security deposit for a total of **\$1,050.00**. I note that the tenant's security deposit has accrued \$0.00 in interest since the start of the tenancy. I find the tenant has met the burden of proof based on the above.

As the tenant paid a filing fee of \$100.00 and their application was successful, I grant the tenant **\$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of \$1,150.00, comprised of \$1,050.00 for double the security deposit, plus the \$100.00 filing fee. I grant the tenant a monetary order pursuant to section 67 of the Act in the amount of **\$1,150.00**.

I caution the landlord not to breach section 38(1) of Act in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of \$1,150.00 as indicated above. I caution the landlord to comply with section 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord. This order must be served on the landlord and

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: April 14, 2020

Residential Tenancy Branch