



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant clarifies that its claim for compensation reflects a claim for return of double the security deposit.

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 started on August 1, 2018 and ended on September 30, 2020. At the outset of the tenancy the Landlord collected \$587.50 as a security deposit. The Landlord recorded the Tenant’s forwarding address on the move-out inspection report dated October 1, 2020. On the move-out report the Tenant authorized the Landlord’s retention of \$149.10 from the security deposit with a returnable amount of \$438.40.

The Tenant states that at move-out the Landlord was told it could send the return of the Deposit by e-transfer as the Landlord had the Tenant's information. The Tenant states that it did not receive the remaining security deposit of \$438.40 (the "Deposit") and that in mid-October 2020 the Tenant called the Residential Tenancy Branch (the "RTB") for assistance.

The Landlord states that it believes that it could not use e-transfer to return the Deposit as the authorization for use ended with the end of the tenancy. The Landlord states that it sent a cheque for the Deposit by regular mail to the Tenant on October 9, 2020. The Landlord provides a copy of a cheque stub and journal entry. The Landlord states that upon receipt of the Tenant's application the Landlord remembered sending the cheque and contacted the Tenant who did not reply. The Landlord states that it also then contacted the bank and confirmed that the cheque had not cleared. The Landlord states that on November 1, 2020 the Landlord could see that the cheque had not cleared the bank account but did not check with the Tenant at this time as the Landlord thought it was too early. The Landlord asks why the Tenant called the Residential Tenancy Branch (the "RTB") in mid October when the return was not due until October 15, 2020. The Landlord asks why the Tenant did not contact the Landlord about not having received the Deposit before making its application.

The Tenant states that it did all it could to seek return of the Deposit and that it did not have to chase or have follow-up contact with the Landlord.

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 Landlord appears to be making the argument that the Tenant had some obligation to contact the Landlord when the cheque did not show up or before making its application seeking the return of double the Deposit. As the Landlord had 15 days from the receipt of the Tenant's forwarding address to return the Deposit to the Tenant, the Tenant could not expect to receive the Deposit before that 15 days. Even if the Tenant contacted the Landlord after the expiry of the 15 days, the Landlord would still be past the 15 days and still be required under the Act to pay the Tenant double. Contact from the Tenant therefore would make no difference to the outcome. I also note that there is no evidence that the Landlord followed up with the Tenant after sending the cheque to ensure its own due diligence in the return of the Deposit.

Although the Landlord provides evidence of a cheque being issued, there is no evidence to support that the cheque was properly mailed, such as a photo of the stamped envelope and its contents or a witness statement of such being mailed. Given the undisputed evidence that the cheque was never cashed and the Tenant's evidence of not having received any return of the Deposit, I find on a balance of probabilities that the Tenant has substantiated that the Deposit was not returned to the Tenant. As such the Landlord must now pay the Tenant double the Deposit (\$438.40 x 2) plus zero interest of **\$876.80**. As the Tenant has been successful with its claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$976.80**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$976.80**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: March 03, 2021

Residential Tenancy Branch