



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Walnut Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD-DR, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for a monetary order for a return of her security deposit, doubled, and for recovery of the filing fee paid for this application.

This dispute began as an application by the tenant under the *ex-parte*, non-participatory Direct Request process. An adjudicator with the Residential Tenancy Branch (RTB) made an Interim Decision on March 2, 2021, and ordered that the direct request proceeding be reconvened for a participatory hearing. This was that hearing.

The tenant and the landlord's agent (landlord) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the parties confirmed receipt of the other's evidence.

The parties were instructed not to record the hearing and both parties affirmed they were not recording the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

- Whether the tenant is entitled to a monetary order comprised of her security deposit, doubled.
- Whether the tenant is entitled to recover her filing fee.

Background and Evidence

The undisputed evidence was that this tenancy began on May 20, 2019 and ended on or about November 29, 2020. The monthly rent was \$1,250 and the tenant paid a security deposit of \$625.00.

The tenancy agreement was filed into evidence.

The tenant's monetary claim is \$1,350.00, comprised of her security deposit of \$625.00, doubled to \$1,250.00, and the filing fee of \$100.

Tenant's evidence in support of her application-

The tenant submitted that she provided her forwarding address on the move-out condition inspection report (CIR), on November 29, 2020.

The tenant confirmed that she agreed the landlord could retain the amount of \$200 from her security deposit, reflected on the CIR.

The tenant said that the landlord eventually returned the balance of her security deposit, or \$425, but only after she filed this application. The tenant said that she understood there were mail delivery problems with the original check, but that she text messaged the landlord on January 22, 2021, and gave a deadline of January 29, 2021 to issue her another check.

The tenant said that she received the amount of \$425 on February 7, 2021, and she received another check in the amount of \$425 on February 14, 2021, dated December 1, 2020. The tenant submitted that as the landlord failed to return her security deposit within 15 days of the end of the tenancy, she is entitled to the security deposit being doubled, as provided for by the Act.

Landlord's response-

The landlord said he submitted the paperwork to the finance department to start the process of issuing the tenant the balance of her security deposit immediately after the move-out inspection on November 29, 2020, and that the check was sent on December 1, 2020.

The landlord submitted that the tenant text messaged him on January 5, 2021, and informed him she had not received the security deposit check. The landlord submitted that he informed the tenant that they were on Christmas break until January 11, 2020, and that he began to investigate the matter.

The landlord said that the owner investigated the matter with his bank and was told that they had multiple reports of mail being delayed during the Christmas holiday, resulting in many stop-payment requests. The bank informed the owner that customers reported that the mail took up to 2 months to be delivered. Filed into evidence was a text message communication noting the history of the investigation.

After the owner investigated and put a stop-payment on the original refund check, the landlord issued the tenant a new security deposit refund check.

Analysis

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

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

In this case, I find the evidence shows that the landlord complied with their obligation under the Act.

The tenant's own evidence was that she received a security deposit check on February 14, 2021, which was dated December 1, 2020. I find this evidence supports the landlord's evidence that they mailed the security deposit refund check on or about

December 1, 2020, within the 15 days of the end of the tenancy and through no fault of their own, the refund check did not arrive until February 14, 2021.

I find this also supports that the issue was related to slower mail service during the holiday period, not the landlord's failure to comply with the Act to repay the security deposit within 15 days of the end of the tenancy, which in this case, was also the date the tenant provided her written forwarding address.

I must point out that the Act does not require that the security deposit be received within 15 days of the end of the tenancy.

As the tenant now has received her security deposit, I dismiss her claim for its return. As I find the landlord complied with their obligation under the Act, I dismiss the tenant's claim that the security deposit be doubled.

As the tenant's application is dismissed, I decline to award her recovery of her filing fee.

Conclusion

The tenant's application is dismissed for the reasons set out above.

This decision 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: March 31, 2021

Residential Tenancy Branch