



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WAKESIAH APARTMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCDT 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* (Act) by the tenant for a monetary order in the amount of \$1,500.00 for the return of double the security deposit, plus the filing fee.

The tenant, SN (tenant) and an agent for the landlord, LM (agent) attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions during the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Although the tenant claims they did not receive the documentary evidence from the landlord, I am satisfied that the tenant was sufficiently served as the tenant provided a new address for service in their documentary evidence, which the tenant originally stated was not provided and then later agreed they had provided. The registered mail tracking number provided by the agent has been included on the style of cause for ease of reference. According to the Canada Post registered mail tracking website, the landlord mailed the registered mail package to the tenant's new address on April 20, 2021 and pursuant to section 90 of the Act, is deemed served 5 days later. As a result, I find the tenant to be deemed served as it is the sole responsibility of the applicant to ensure the respondent is aware if they move their service address, which the tenant failed to do in the matter before me.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of

Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, 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 them.

Issues to be Decided

- Is the tenant entitled to the return of double the security deposit pursuant to section 38 of 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 July 1, 2019 and reverted to a month to month tenancy after June 30, 2020. Monthly rent in the amount of \$1,400.00 was due on the first day of each month. The tenant paid a security deposit of \$700.00 at the start of the tenancy, which has accrued no interest under the Act.

The parties agreed that the tenant provided their written forwarding address on November 29, 2020, which was the date the outgoing Condition Inspection Report (CIR) was signed by the parties. The agent presented documentary evidence that supports that the landlord attempted to return the tenant's security deposit on December 8, 2020 via direct deposit. The tenant argued that that account was closed and as a result did not receive the security deposit within 15 days under the Act. The tenant was asked if they notified the landlord in writing that their direct deposit account had been closed, which the tenant confirmed they had not done. The tenant testified that they had a phone conversation with "Jeff", which the agent stated they were not made aware of and disputed that the landlord had been advised of the account being closed by the tenant.

The agent testified that a second attempt was made once the tenant advised the landlord they had not received their security deposit. As a result, the landlord then issued a cheque in the amount of \$700.00 dated January 11, 2021 in the name of both

tenants, SN and AS, both of which who are named on the original tenancy agreement submitted in evidence. The tenant confirmed they did not deposit the cheque and stated the reason was because both tenants are named on the cheque. The tenant was advised that the cheque is not stale dated and can name both tenants and either tenant has the right to deposit the cheque.

The tenant wanted to present additional evidence and was not permitted as the tenant was advised that based on the evidence agreed to between the parties, I was dismissed the tenant's application as the landlord complied with the Act. I will address this further in my analysis below.

Analysis

Based on the testimony, documentary evidence, and on a balance of probabilities of the parties, I find the following.

Section 38 of the Act applies and states:

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.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],

(b) by giving the deposit personally to the tenant, **or**

**(c)by using any form of electronic
(i)payment to the tenant, or
(ii)transfer of funds to the tenant.**

[emphasis added]

Based on the above, I find the tenant failed to advise the landlord in writing that their direct deposit account had been closed and that a disputed phone conversation is insufficient evidence to support the doubling of a security deposit under the Act. Therefore, I find the tenant has failed to meet the burden of proof. Furthermore, at the very least if the tenant closed their account, I would have expected the tenant to have provided written notice to the landlord to advise of such, which the tenant confirmed they did not do.

As a result, I find the landlord did attempt to return the full \$700.00 security deposit on December 8, 2020, which is within the 15-day timeline provided for under the Act. In addition, I find that once the tenant advised the landlord that the security deposit had not been received, that the landlord made a second attempt by issuing a cheque to the tenants and that the tenant has not yet deposited the \$700.00 cheque, which I find can still be cashed as it is not yet stale-dated.

The Act does not require that the payment be **received** by the tenant within 15 days. The landlord had 15 days to repay the security deposit and I find the landlord provided sufficient evidence that they attempted to pay via direct deposit and that the account had been closed, which is not the fault of the landlord and for which I find the landlord is not liable for any delay associated with the closure of that account.

Given the above, I find the tenant is not entitled to the return of double their security deposit. Therefore, **I dismiss** the tenant's application in full due to insufficient evidence, without leave to reapply.

I do not grant the filing fee as this application has no merit.

Conclusion

The tenants' application fails in its entirety as it has no merit.

The tenant may cash the cheque in the amount of \$700.00 which the tenant continues to hold.

The filing fee is not granted.

The decision will be emailed to both parties.

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 30, 2021

Residential Tenancy Branch