



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prime Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on April 20, 2021, and August 17, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return double the security deposit or pet damage deposit

The Tenant and the Landlord attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed that the Tenant paid a security deposit of \$575.00 and a pet deposit of \$575.00. Both parties agree that the Tenant moved out on or around November 27, 2020, but had given Notice for the end of November, and had paid rent up until that time. A move-out inspection was completed on November 29, 2020, and an inspection report was completed at that time. The Tenant provided his forwarding address in writing on the bottom of the condition inspection report on November 29, 2020. The Landlord retained this document at the end of the inspection.

During the hearing, the Landlord explained that he received the Tenant's forwarding address the same day the move out inspection was completed, on November 29, 2020. The Landlord stated that he wrote a cheque for the full amount of both deposits, \$1,150.00. The Landlord did not provide a copy of the cheque, but provided a copy of the stop payment order he made to the bank around a month after the cheque was written. The Landlord explained that on January 8, 2021, he ordered a stop payment on the cheque from December 7, 2020, as the Tenant had not received or cashed the cheque by that time, and the Landlord was concerned the cheque had fallen into the wrong hands.

The Landlord stated that he mailed the cheque on December 7, 2020, but did not provide any corroborating evidence to support that he sent the mail on this date. The Tenant stated that he never received any cheque from the Landlord, and eventually inquired as to what was going on with his deposit. The Tenant does not believe the Landlord ever sent the deposit by cheque.

Subsequently, the Landlord sent an e-transfer to the Tenant for the full amount of the deposit on January 8, 2021, after the Landlord had done his account reconciliation and noticed that the original cheque from a month earlier had not been cashed. The Landlord provided a confirmation that this etransfer was sent on January 8, 2021, and cashed on or around January 16, 2021.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding

address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenant had given Notice to end tenancy effective November 30, 2020, and had paid rent up until that time, which I find reflects the end of the tenancy. The Landlord confirmed that he got the Tenant's forwarding address in writing on November 29, 2020, at the bottom of the move-out inspection report. I find the Landlord received the Tenant's forwarding address in writing on November 29, 2020.

I note the Tenant did not authorize any deductions from the security deposit.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the end of the tenancy, November 30, 2020, (until December 15, 2020) to either repay the security and pet deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. No application against the deposits was made.

The Landlord stated he mailed the cheque on December 7, 2020. However, he provided no proof of mailing, no witness statements, and no proof of service to corroborate this fact. There is little corroborating evidence to support that the cheque was sent, and when it was sent. Although registered mail is not required, and regular mail can be used, it can be more difficult to corroborate the service of documents by regular mail, as it does not have formal tracking information. It can also be challenging to sufficiently substantiate the disputed service of any document without any further documentary evidence, proof of service, witness statements, or photos/videos.

In this case, the Tenant does not need to receive the deposits back within 15 days, but the Landlord has to sufficiently demonstrate that the funds have been *sent* back through one of the methods under section 38(8) of the *Act*, within the 15 days. In this case, I find there is insufficient evidence that the Landlord sent the deposits back within 15 days. Although the Tenant eventually received an e-transfer for the full amount of the deposits, sometime in mid-January 2021, I find this was after the breach of section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenant is entitled to recover double the amount of the security and pet deposit (\$1,150.00 x 2), less the amount already returned (\$1,150.00). The Landlord is required to pay an additional \$1,150.00, for breaching section 38(1) of the *Act*. Further, section 72 of the *Act* gives me authority

to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I issued the Tenant a monetary order for \$1,250.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenant a monetary order in the amount of **\$1,250.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 17, 2021

Residential Tenancy Branch