



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIS CHARITIES ASSN.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSDS-DR

Introduction:

This hearing was initiated by way of a Direct Request Proceeding. The Adjudicator who considered the initial Application for Dispute Resolution concluded that the matter should be determined at a participatory hearing.

This hearing was convened to consider the Tenant's application for the return of the security deposit.

The Agent for the Tenant stated that on August 27, 2021 the Dispute Resolution Package was sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant submitted documentation from Canada Post that corroborates this testimony. The Agent for the Tenant stated that the service address is the business address for the Landlord.

In the absence of evidence to the contrary, I find that the hearing documents have been served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing. As the hearing documents were properly served to the Landlord, the hearing proceeded in the absence of the Landlord.

On July 20, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Tenant was given numerous opportunities to explain how this evidence was served to the Landlord however she was unable to recall if it was served to the Landlord. As the Tenant failed to establish that this evidence was served to the Landlord, it was not accepted as evidence for these proceedings.

The Agent for the Tenant was told on several occasions that her documentary evidence was not be accepted as evidence for these proceedings and, as such, I could not view those documents. She was advised that she could testify about the content of those documents even though I would not be physically viewing them.

On February 09, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was received form the Landlord, via registered mail, on February 10, 2022.

Residential Tenancy Branch Rules of Procedure require a Respondent to serve evidence to the Applicant not less than seven days prior to the hearing date. As the Agent for the Tenant acknowledged receiving the Landlord's evidence on February 10, 2022, I find that it was served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, and the evidence was accepted as evidence for these proceedings.

The Agent for the Tenant was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Agent for the Tenant affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Tenant was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Agent for the Tenant affirmed she would not record any portion of these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Agent for the Tenant stated that:

- the tenancy began in 2013 or 2014;
- she does not know if a condition inspection report was completed at the start of the tenancy;
- a security deposit of \$1,010.00 was paid;
- she does not know when the security deposit was paid to the Landlord;
- this tenancy ended on October 31, 2020;
- the Landlord did not schedule a time for a final condition inspection report when this tenancy ended;

- during a telephone conversation with an agent for the Landlord on October 31, 2020, that agent for the Landlord informed her that she could provide a forwarding address for the Tenant via email;
- on October 31, 2020 she provided the Landlord with a forwarding address for the Tenant, via email;
- On April 13, 2021 she sent the Landlord a forward address to the Landlord, via registered mail;
- She knows she sent the forwarding address on April 13, 2021 as she has Canada Post documentation regarding that mailing;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord sent the Tenant a cheque in the amount of \$1,010.00; and
- she does not know if the Landlord filed an Application for Dispute Resolution claiming against the security deposit.

The Landlord submitted a copy of the security deposit refund cheque that was sent to the Agent for the Tenant. The date on this cheque is very difficult to read however it appears to be dated April 30, 2021. A statement associated to that cheque, which was submitted by the Landlord, is dated April 30, 2021.

At the hearing the Agent for the Tenant stated that she received that security deposit refund cheque shortly after the cheque was written, although she cannot recall the date it was received. The Agent for the Tenant was advised that in the Application for Dispute Resolution she declared the cheque was received with a postal stamp of May 21, 2021 and she subsequently stated that it must have been received after May 21, 2021.

Analysis:

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$1,010.00 and that the tenancy ended on October 31, 2020.

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates 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 either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

The Tenant submits that the Landlord did not comply with section 38(1) of the *Act*. As

the Tenant is the Applicant in this matter, the Tenant bears the burden of proving the security deposit was not returned in accordance with section 38(1) of the *Act*.

Tenants are required to provide a forwarding address in accordance with section 88 of the *Act*. In October of 2020 service by email or text message was not a method of service permitted by section 88 of the *Act*. Even if I accepted the Agent for the Tenant's testimony that a forwarding address for the Tenant was served to the Landlord by email on October 31, 2020, I would conclude that it was not served to the Landlord in accordance with section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. In the absence of evidence that establishes the Landlord received the Tenant's forwarding address by email on October 31, 2020, I cannot conclude that the Tenant's forwarding address was served on that date pursuant to section 71(2)(c) of the *Act*.

On the basis of the testimony of the Agent for the Tenant, I find that the Tenant's forwarding address was provided to the Landlord, via registered mail, on April 13, 2021. I find it reasonable to rely on this testimony, as the Agent for the Tenant was able to rely on Canada Post documentation that she has in her possession to support her memory that it was mailed on that date.

Pursuant to section 90 of the *Act*, the Landlord is deemed to have received the forwarding address that was mailed on April 13, 2021 five days after it was mailed, which is April 18, 2021.

As this tenancy ended in 2020 and the forwarding address for the Tenant is deemed received on April 18, 2021, section 38(1) of the *Act* obligated the Landlord to either return the security deposit or file a claim against it by May 03, 2021. I specifically note that the security deposit needed to be returned by May 03, 2021, it did not need to be received by May 03, 2021.

On the basis of the security deposit refund cheque and a statement associated to that cheque, which were submitted in evidence by the Landlord, I find that on April 30, 2021 the Landlord wrote the Tenant a refund cheque in the amount of \$1,010.00.

I find that the Tenant has submitted insufficient evidence to establish that the April 30,

2021 security refund cheque was not mailed to the Tenant sometime after April 30, 2021 and before May 03, 2021. In reaching this conclusion I was heavily influenced by the fact there is no documentary evidence before me that establishes when it was mailed.

At one point in the hearing the Agent for the Tenant testified that she did not recall when she received the security deposit refund cheque but she believed it was received shortly after the cheque was written. After being advised that the Application for Dispute Resolution declares the cheque was received with a “postal stamp” of May 21, 2021, she stated that it must have been received after May 21, 2021. As the Agent for the Tenant does not clearly recall when the cheque was received, I find that her testimony cannot be relied upon to determine if the cheque was sent on, or before, May 03, 2021.

I specifically note that I am confident that the Agent for the Tenant was attempting to provide accurate information during the hearing. I find, however, that the Agent for the Tenant had difficulty clearly recalling several important details at these proceedings, such as if the Tenant’s evidence was served to the Landlord or when she received the security deposit refund cheque. At one point in the hearing she declared that her memory was poor. As such, I am not confident that she knows when the security deposit refund cheque was received.

I find there is insufficient evidence to conclude that the Landlord failed to comply with section 38(1) of the *Act*, as it is entirely possible that the Landlord mailed the April 30, 2021 refund cheque to the Tenant on, or before, May 03, 2021, which is within 15 days of receiving the forwarding address, in writing, and the end of the tenancy.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have insufficient evidence to conclude that the Landlord failed to comply with section 38(1) of the *Act*, I cannot conclude that the Landlord is subject to the penalty imposed by section 38(6) of the *Act*. I therefore dismiss the Tenant’s application for double the security deposit.

As it is entirely possible that the Landlord returned the security deposit in accordance with section 38(1) of the *Act*, I do not need to determine if the Landlord complied with sections 24 and 36 of the *Act*, which relate to completing condition inspection reports at the start and end of the tenancy.

Conclusion:

The Application for Dispute Resolution is dismissed, without leave to reapply.

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

Dated: February 19, 2022

Residential Tenancy Branch