



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Valley Land Subdivision Ltd.
Glenmore Central Apartments Limited
Realstar Management Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD-DR, 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 double the security deposit - Section 38; and
2. 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 Parties confirm that they are not using any recording devices for the hearing.

Preliminary Matters

The Tenant’s application was originally dealt with through the direct request proceedings. In a Decision dated November 26, 2021 (the “Decision”) the matter was adjourned to this participatory hearing. The Landlord confirms that they received the Tenant’s package that contained the Decision on November 28, 2021 and the Tenant’s further evidence package on February 28, 2022. The Landlord states that they sent their evidence to the Tenant by registered mail on June 8, 2022. The Tenant states that they did not receive any evidence from the Landlord.

Rule 3.15 of the Rules of Procedure provides that evidence intended to be relied upon by the respondent must be served on the applicant as soon as possible and not less

then seven days before the hearing. The Landlord's evidence is that they received the Decision on February 28, 2022 for a hearing date of June 14, 2022. The Landlord made no submissions that the evidence they intended to rely upon at the hearing was not available until June 8, 2022. For these reasons, as the evidence was provided late and accepting the Tenant's evidence of not having received the Landlord's evidence, I decline to consider the Landlord's documentary evidence.

The Parties agree that only Landlord GCAL and Landlord RMP are properly named as Landlords on the application and that Landlord VSL is not a Landlord.

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 under written agreement started on March 1, 2019 and ended on August 29, 2021. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. The Parties mutually conducted a move-in and move-out inspection with completed reports copied to the Tenant. The Tenant provided their forwarding address to the Landlord on their notice to end the tenancy dated July 30, 2021 and on the move-out inspection completed August 29, 2021.

The Tenant states that the Landlord did not return the security deposit. The Landlord states that the deposit was returned to the Tenant by regular mail on September 2, 2021. The Landlord states that they have an entry in their Tenant ledger indicating that the cheque was issued on this date. The Landlord's Agent does not dispute that the processing and mailing of the security deposit cheque is handled by another person in a different province. The Landlord states that the cheque has not cleared their bank and that it would now be stale dated. The Landlord states that they have no reason at all to hold the security deposit and argues that it must have been returned. The Landlord

states that at the time there were disruptions to the mail due to the fire season. The Landlord states after receiving the Tenant's application no investigations were made with the post office in relation to the mail delivery. The Landlord argues that the Tenant should have informed the Landlord prior to the expiration of the 15-day limitation period that the Tenant did not receive the return of the security deposit. The Landlord confirms that the Tenant was never informed that the security deposit was returned on any date.

The Tenant argues that the Landlord gives unsupported evidence of the security deposit being returned to the Tenant, was not present for the mailing of a return cheque and that the cheque was more likely never mailed. The Tenant claims return of double the security deposit in the amount of \$1,300.00.

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 Tenant's testimony of not having received any mail containing the return of the security deposit holds a ring of truth. For this reason and as the Landlord has not provided any supporting or direct evidence of the cheque being placed in the mail to the Tenant, I find on a balance of probabilities that the Landlord did not return the security deposit to the Tenant. The Landlord must therefore pay the Tenant double the security deposit plus zero interest of **\$1,300.00**. As the Tenant has been successful with this claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,400.00**. As Landlord VSL is not a landlord to this dispute I do not include this party on the monetary order.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,400.00**. 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 Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 15, 2022

Residential Tenancy Branch