



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL DEVELOPMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant MH attended the hearing by way of conference call, the landlord did not. I waited until at least 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution and evidence package on December 21, 2021. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenants' application and evidence, 5 days after mailing. The tenant confirmed receipt of the landlord's evidentiary materials.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for money owed?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on January 1, 2020, and was to tend on December 31, 2020. Monthly rent was set at \$850.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$425.00. The tenancy became frustrated on April 8, 2020 due to an apartment fire.

The tenant filed this application on December 15, 2021, requesting the return of their security deposit, as well as a refund of the rent for the remainder of April 2020. The tenant provided a copy of the refund request dated April 17, 2020, which provided a forwarding address. The tenant confirmed their forwarding address in the hearing, which was different from the address on the request, but confirmed was the same address on this application. The tenant testified that the security deposit was mailed to a friend, but they never received a cheque for the remaining amount.

The landlord provided in evidence proof of two cheques that were issued to the tenant. The landlord provided bank records that shows that a cheque in the amount of \$425.00 was cashed on July 7, 2020. The landlord also provided a receipt for cheque #903 in the amount of \$623.33. The tenant denies receiving this cheque.

Analysis

In consideration of the evidence and testimony before me, I am satisfied that the tenants' security deposit was returned to the tenants in full, which the tenants had cashed on July 7, 2020. Accordingly, the tenants' application for the return of their security deposit is dismissed without leave to reapply.

I find that the landlord did attempt to return \$623.33 to the tenants, but the cheque was not received by the tenants. I note that the address on the refund request is different than the forwarding address confirmed in the hearing. I do not find that the landlord had intentionally withheld this money. As the landlord has not provided evidence to support that this cheque was cashed, and as it is undisputed that this tenancy had ended on April 8, 2022 due to frustration, I order that the landlord re-issue a replacement cheque to the tenants in the amount of \$623.33, unless the landlord has proof that the original cheque has been cashed. I order that this new cheque be sent to the tenant's forwarding address as noted on the cover page of this decision.

I note that although the tenants had filed to recover the filing fee for this application, the filing fee was waived for this application. Accordingly, the application to recover the filing fee is dismissed without leave to reapply.

Conclusion

I order that the landlord issue a replacement cheque to the tenants in the amount of \$623.33 to the tenants' forwarding address noted on the cover page of this decision, unless the landlord can provide proof that this cheque was cashed.

The tenants are provided with a monetary order in the above amount. The landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' application 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 *Residential Tenancy Act*.

Dated: August 24, 2022

Residential Tenancy Branch