



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

On May 14, 2022 the Tenant completed their Application for Dispute Resolution, seeking the return of their security deposit after the tenancy ended, and reimbursement of the Application filing fee.

This was via the Direct Request method available to an applicant in these circumstances; there was no participatory hearing to review the merits of the Tenant's Application for Dispute Resolution. On June 14, 2022 the Adjudicator, by written decision, granted the return of twice the amount of the security deposit, and the filing fee, and provided a monetary order to the Tenant.

The Residential Tenancy Branch re-convened the hearing because the Landlord after made an Application for Review Consideration. A separate Arbitrator reviewed that Application for Review Consideration and found the Landlord successful on the basis of new and relevant evidence. The Arbitrator ordered a new hearing of the Tenant's original Application.

This matter was reconvened under s. 82(2) of the *Residential Tenancy Act* (the "Act"), and the teleconference hearing was on November 4, 2022. Under s. 82(3), I may confirm, vary, or set aside the Decision and Monetary Order of June 14, 2022.

In the conference call hearing, I explained the process and provided the parties the opportunity to ask questions.

At the start of the hearing, the Landlord set out their evidence that they provided disclosure of their evidence to the Tenant via registered mail. The Tenant did not question this method and made no claim they did not receive the Landlord's evidence.

The Tenant stated they provided additional evidence to the Residential Tenancy Branch in the interim; however, this does not appear in the record.

Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit pursuant to s. 38(1)(c) of the *Act*?

Is the Tenant entitled to reimbursement of the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant originally provided a copy of the tenancy agreement for this hearing. Both parties, including two other tenants, signed the agreement prior to the start of the tenancy, on December 11, 2020. The rent was \$1,350 per month payable on the first day of each month. The Tenant paid a deposit of \$675 on December 14, 2020.

The Tenant provided a copy of the Condition Inspection Form, completed and signed by both parties on February 28, 2022 when the Tenant moved out. This shows the original amount of security deposit at \$675, as well as a pet damage deposit of \$675. The Tenant signed the agreement in the outgoing inspection area of the form to indicate their approval for the deduction of \$170 from the security deposit. The Tenant provided a forwarding address on the Condition Inspection Form.

The Tenant's Application in the Direct Request proceeding resulted in the Adjudicator granting double the amount of the deposit, based on the evidence available for that process. The Adjudicator found the Landlord did not return the deposit or file an application to retain the deposit within 15 days after the end of the tenancy. In their original application, the Tenant provided the date of February 27, 2022 as the end-of-tenancy date. The Adjudicator determined March 15, 2022 as the end-date of the 15-day time period granted under the *Act*.

The Adjudicator ordered the amount of \$2,460 in total, calculated as:

- double the unreturned security deposit, $\$505 \times 2 = \$1,010$
- double the pet damage deposit, $\$675 \times 2 = \$1,350$

- recovery of the Application filing fee = \$100

This was based on the Tenant's Direct Request Worksheet that the Tenant completed as part of their original Application, signed by the Tenant on May 12, 2022. They listed the \$505 security deposit amount and the \$675 pet damage deposit amount.

In the Application for Review Consideration, the Landlord provided the following:

- copy of the original cheque dated March 11, 2022, in the amount of \$1,180
- copy of a signed statement from the employee of the Landlord who processed the cheque and mailed it on March 11, 2022, to the address the Tenant provided on the Condition Inspection Form
- copy of a "reissued" cheque, with the record showing the Tenant deposited that on May 21, 2022.

The Landlord submitted they mailed the required amount via cheque to the Tenant, within the 15-day limit, and the evidence they provided shows this. The evidence of this was not before the original Direct Request Adjudicator.

In the hearing, the Tenant acknowledged receiving the full amount of their returned deposits (minus \$170, as outlined above) "2 or 3 days after I applied".

The Tenant stated they called to the Landlord on March 26 to advise the Landlord did not use the correct mailing address for the original return of the deposit when they issued the March 11 cheque. The Landlord apologized at that time. The Tenant waited one more month after this, then "went straight to voicemail" on their attempt to call the Landlord to discuss on approximately April 26.

Analysis

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives a tenant's forwarding address in writing, a landlord must repay any security or pet damage deposit to the tenant or make an application for a claim against any deposit.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay that tenant double the amount of the security and pet damage deposit.

From the evidence I find as fact that the tenant provided their forwarding address to the landlord on February 28, 2022. The evidence for this is the single document, signed by the Landlord and the Tenant, precisely providing this information.

With both parties providing testimony under the affirmed oath, I give weight to their statements in the hearing. The Tenant provided that the Landlord sent the cheque to the incorrect address.

I find the Landlord's first mailed cheque was sent to the address as provided by the Tenant on the Condition Inspection Form. The Landlord provided a copy of that first cheque and the address on it matches to what is on the Condition Inspection Form. I find as fact that the Landlord completed their obligation to send the return of the deposit amounts to the Tenant within 15 days: the Landlord sent the cheque to the Tenant on March 11, 2022; this is within the 15-day limit set out in s. 38.

There is no evidence of a clerical error on the part of the Landlord; however, I do not have to rectify whether the Landlord used an incorrect address or not. I find they sent a cheque within the required timeline to the address provided to them in the Condition Inspection Form. That is all that the *Act* requires.

I find the Landlord did return the agreed-upon deposit remainder to the Tenants as the *Act* requires. There was no breach of s. 38(1); therefore, s. 38(6) does not apply and the Landlord is not obligated to pay double the amount of the security deposit.

On this basis, **I set aside the original decision of the Adjudicator dated June 14, 2022**, pursuant to s. 82(3) of the *Act*. **I set aside the monetary order for \$2,460**. I find the Tenant received the correct deposit refund amount in full, in the amount of \$1,180, and deposited that amount on May 21, 2022. In sum, there is nothing further owing from the Landlord to the Tenant in this matter.

The Tenant did not rectify the matter with the Residential Tenancy Branch upon receipt and deposit of the original cheque and did not update the record to show this before their original Adjudicator considered their Application. For this reason, I grant no refund of the Application filing fee to the Tenant here and I set aside that individual piece of the original Adjudicator's decision.

Conclusion

I set aside the original decision and monetary order, and dismiss the Tenant's Application in its entirety, without leave to reapply. The monetary order dated June 14, 2022 is of no force or effect.

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

Dated: November 14, 2022

Residential Tenancy Branch