



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR

Introduction

On August 16, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”).

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served her Notice of Hearing and evidence package to the Landlord by registered mail on or around October 4, 2022, and the Landlord confirmed that he received this package. However, he testified that there was no evidence included in that package. When the Tenant was asked about this, she claimed that her documentary evidence was included in this package, but she did not serve her digital evidence to the Landlord. Given that the Tenant’s digital evidence was not served to the Landlord, and given that there was no proof that this documentary evidence was included in this package, I find it more likely than not that the Tenant failed to include her documentary evidence into this package. As such, I am satisfied that the Landlord has been duly served the Tenant’s Notice of Hearing package. However, as I am not

satisfied that any of the Tenant's evidence was served, I have excluded this evidence and will not consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant by registered mail on May 31, 2023, and the Tenant confirmed that she received this package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double the security deposit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy was supposed to start on April 1, 2021, and that the Tenant never moved into the rental unit despite signing a tenancy agreement to do so for a period of one year. Rent was established at an amount of \$2,200.00 per month and was due on the first day of each month. A security deposit of \$1,100.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that she provided her forwarding address in writing on May 18, 2021, by mailing it to the Landlord. However, the Landlord claimed that he received this letter on May 17, 2021. Regardless, he testified that he then sent a cheque for the Tenant's security deposit to the address that the Tenant provided, and this was sent on May 27, 2021, by registered mail (the registered mail tracking number is noted on the first page of this Decision). He stated that the package was unclaimed and returned to

sender, and he referenced the documentary evidence submitted to corroborate this submission.

The Tenant testified that she somehow “found” a notification from Canada Post on June 2, 2023, and that when she went to the post office to collect this, it was a letter from the Landlord. However, there was no cheque included.

Given that the registered mail with the returned cheque was unclaimed by the Tenant and returned to the Landlord in 2021, clearly the Tenant could not have received a notification from Canada Post for this package two years later. As the Landlord advised that he sent his evidence to the Tenant by registered mail on May 31, 2023, and as the Tenant confirmed that she received this, I find it more likely than not that the Tenant is confusing the two packages.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, the Tenant provided a forwarding address in writing to the Landlord on or around May 18, 2021, and the Landlord confirmed receiving it around that time. I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenant’s written consent.

I note that I have solemnly affirmed testimony from the Landlord that he mailed a cheque in the amount of \$1,100.00 to the Tenant, at the address provided by the Tenant, on May 27, 2021. Furthermore, I have before me documentary evidence of that registered mail being sent out and of it being unclaimed by the Tenant. As such, I am satisfied that the Landlord attempted to return the security deposit in full within 15 days of receiving the forwarding address in writing in compliance with the *Act*. As it went unclaimed by the Tenant, I find that the doubling provisions of this Section do not apply in this instance.

Moreover, as the Tenancy ended in April 2021 because the Tenant did not move into the rental unit, Section 60 of the *Act* states that an Application for Dispute Resolution must be made within two years of when the tenancy ends. As it has now been more than two years since the tenancy ended, neither party will be able to make another Application against the Landlord related to this tenancy.

Conclusion

The Tenant's 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: July 10, 2023

Residential Tenancy Branch