



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38. The application is inclusive of an application for recovery of the filing fee for the cost of this application. Both, the tenant and the landlord were represented at today's hearing

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed relevant facts before me, according to testimony, are as follows. At the start of the tenancy in 2012 the landlord collected a security deposit of \$547.50. At the end of the tenancy there was agreement by the parties that the landlord was returning the security deposit in full. The parties agree the tenant provided their forwarding address on August 26, 2013 and each party agreed as to the reliance of that address. The landlord provided evidence that they sent / shipped a cheque dated September 10, 2013 in the agreed amount on September 12, 2013. The tenant confirmed receiving the cheque and placed it with their financial institution; however, communication between the parties caused a stop payment on the cheque, which was done with the tenant's knowledge and acceptance, and mutual understanding that a replacement cheque would follow. Both parties provided evidence of this first cheque – ##### - as being

sent by the landlord's corporate office, received, and ultimately 'stopped' by the tenant's financial institution. The tenant provided testimony that to date they have not received a replacement cheque subsequent to the first.

The landlord provided document evidence of a second cheque – ***** – in the same form and format as for the first cheque, sent to replace the first cheque. The landlord's document evidence is that the corporate office sent / shipped a replacement cheque on September 27, 2013 by ordinary mail to the same address for the tenant. The landlord testified that during this hearing is the first time they learned the tenant's claim they did not receive the second cheque, and further testified the second cheque has not been returned to them and their records indicate the cheque was cashed and the funds for this cheque have been reconciled by their corporate office.

Analysis

On preponderance of the evidence provided and on the balance of probabilities, I have reached a decision. In respect to the tenant's claim for double the security deposit:

Section 38(1) of the Act, in relevant part, provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

It is undisputed that the landlord sent/ shipped to the tenant a cheque in the agreed amount and it was received. However, I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord was obligated under Section 38 of the Act to return the agreed amount of \$547.50 by no later than September 10, 2013, however did not do so until September 12, 2013. The amount which is doubled is the \$547.50 original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$1095.00 and is further entitled to recovery of the \$50 filing fee for a total entitlement of **\$1145.00**.

In respect to the parties' dispute regarding the second replacement cheque, it must be noted that neither party provided sufficient evidence to establish their version of events. None the less, I find that as the landlord's corporate office followed the same format and form and procedure for the second cheque as for the first, I prefer, on balance of probabilities, the landlord's document evidence and version of events that on September 27, 2013 their corporate office sent / shipped a replacement cheque to the tenant's forwarding address in accordance with Sections 38(8), and 88(d) of the Act, and that, on balance of probabilities, the tenant received the second cheque and that the second cheque has not been cancelled and remains valid. As a result, the *calculation for the tenant's award is as follows:*

| | |
|---|-----------------|
| Original security deposit | \$547.50 |
| <i>Double</i> original security deposit award | \$547.50 |
| Filing fee for the cost of this application | 50.00 |
| Less amount sent to tenant | -547.50 |
| Total Monetary Award to tenant | \$597.50 |

Conclusion

I grant the tenant an Order under Section 67 for the sum of **\$597.50**. The tenant is given this Order. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: January 06, 2014

Residential Tenancy Branch

