



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TESSLER AND STEIN PROPERTY MANAGEMENT COMPANY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on May 27, 2015, to obtain a Monetary Order for the return of their security and/or pet deposit and to recover the cost of the filing fee for their application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the Tenant.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order to double her deposit?

Background and Evidence

The parties entered into a written month to month tenancy agreement which listed two co-tenants. The tenancy began on February 1, 2015 and rent of \$825.00 was due on or before the first of each month. On or around February 1, 2015 the Tenant(s) paid a total of \$825.00 comprised of \$412.50 as the security deposit plus \$412.50 as the pet deposit.

The Tenant testified that they vacated the rental property and then paid the full month's rent for April 2015. They attended the move out inspection and provided her forwarding address to the Landlord on May 1, 2015.

The Tenant testified that she did not receive the return of her pet deposit within the required timeframes so she filed her application to seek the doubling portion of her deposit of \$412.50. She submitted that after she filed her application she received the cheque in the mail on May 20, 2015. She was of the opinion that she is still entitled to the doubling portion.

The Tenant stated that she did not keep the envelope in which the refund cheque was sent to her. She did however, keep the cheque stub for cheque # 14439 which listed an issue date of 07/05/2015 (May 7, 2015).

The Tenant submitted documentary evidence in support of her application which included, among other things, copies of: the tenancy agreement; a tenant ledger; condition inspection form; a receipt dated January 11, 2015 showing receipt of the deposits from the co-tenants; and a document titled "Damage Deposit Return".

The Landlord testified that the security and pet deposits were issued and returned to the Tenants within the required timeframes. Specifically, she stated that the cheques were issued May 7, 2015 by their head office and mailed the same date. Each Tenant cashed the cheques on May 22, 2015.

The Landlord asserted that once they place the cheques in the mail it is up to Canada Post mail services to deliver them. She argued that they cannot be held responsible for the mail service as they sent the cheques within the required time frames.

The Damage Deposit Return form submitted by the Tenant indicates that each co-tenant had different forwarding address. Beside the Tenant C.C.'s name was written (Pet Dep.) and below the co-tenant J.D.'s name was written (SEC/DEP). There was also two PAID stamps on this document below each co-tenants' name, dated May -7 2015 and listing a cheque number.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The party making the claim for monetary compensation bears the burden to prove their claim. Therefore, in this case the Tenant bears the burden to prove the Landlord did not comply with the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

The undisputed evidence was the tenancy ended April 30, 2015 and the Landlord was provided each Tenant's forwarding address on May 1, 2015. Therefore, the Landlord was required to return the security and pet deposit to at least one or both of the co-tenants no later than May 16, 2015, pursuant to section 38(1) of the *Act*.

The Tenant submitted adverse documentary evidence in support of her application which clearly supports the Landlord's submission that the Landlord divided the deposits equally amongst each co-tenant and issued cheques on May 7, 2015 to each Tenant.

Section 90 of the *Act* provides that a document given or served by mail is deemed to be received on the 5th day after it is mailed.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

After careful consideration of the foregoing and on a balance of probabilities I find the Landlord complied with Section 38(1) of the *Act* by issuing and mailing the deposit refund cheques on May 7, 2015. In absence of documentary evidence to prove the contrary, such as a copy of the envelope and postmark, I accept the Landlord's submission that the envelopes were placed in the mail on May 7, 2015.

The envelopes mailed May 7, 2015 would be deemed received on May 12, 2015, five days after they were mailed, pursuant to section 90 of the *Act*, which is within the required timeframes. I accept the Landlord's argument that once the deposits are mailed they cannot control how long Canada Post will take to deliver them.

Based on the above, I find the Tenant submitted insufficient evidence to prove the Landlord did not return the deposit cheque(s) within the required timeframe. Accordingly, I dismiss the Tenant's application, without leave to reapply.

The Tenant has not succeeded with their application; therefore, I decline to award recovery of her filing fee.

Conclusion

The Tenant provided insufficient evidence to prove her claim and her application was 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: November 04, 2015

Residential Tenancy Branch

