



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Real Estate Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 20, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the double the security deposit; and,
- Recovery of the cost of the filing fee.

Both the Landlord and the Tenant attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenant's evidence package, including the application and Notice of Hearing. The Tenant confirmed they received the Landlord's evidence package. Neither party took issue with the service of these documents. I find both parties sufficiently served each other with these packages.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

2. Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agree that the Tenancy ended on August 31, 2019, and a move out inspection was done on that date. Both parties also agree that the Landlord used to hold a \$660.00 pet deposit and a \$660.00 security deposit.

The Landlord confirmed that they received the Tenant's forwarding address in writing at the move-out inspection, on August 31, 2019, which was also the last day of the tenancy. The Landlord provided a copy of a cheque in the amount of \$1,320.00 dated September 6, 2019. The Landlord stated that this cheque was for the full return of the deposits. The Landlord stated they sent the cheque to the Tenant's forwarding address by regular mail on September 10, 2019. The Landlord stated the cheque was put in the mail in Ontario, so it must have taken an extra couple of days to get delivered.

The Tenant stated that they did not receive the cheque until September 17, 2019, which is 2 days after the 15 day window under section 38 of the Act. As such, the Tenant is looking to recover double the security and pet deposit 2 x \$1,320.00 less then amount they already received, \$1,320.00.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

Although the Tenant did not receive the cheque in the mail until September 17, 2019, I find they are not entitled to double the security and pet deposit, as I find the Landlord did not breach section 38 of the Act. The Landlord received the Tenant's forwarding address on the same day the tenancy ended, August 31, 2019. As such, the Landlord had 15 days, until September 15, 2019, to file an application against the deposit or send

the deposits back to the Tenant. The cheque was drafted and signed on September 6, 2019, and the Landlord mailed the full amount back to the Tenants on September 10, 2019, by mail. I find the Landlord complied with section 38 of the Act.

I dismiss the Tenant's application to recover double the security and pet deposits. As the original deposits have already been returned, no further action is required in that regard. Since the Tenant's application was not successful, I decline to award the recovery of the filing fee.

Conclusion

The Tenant's application for return of double the security deposit has been 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: January 21, 2020

Residential Tenancy Branch