



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacDonald Commercial Real Estate Services
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

In this application for dispute resolution, the tenant applied on June 23, 2022 for:

- an order for the return of the security deposit and/or pet damage deposit; and
- recovery of the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the tenant entitled to a monetary order for the return of the security deposit?
- 2) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began July 1, 2009 and ended May 31, 2022, rent was \$2,055.00 at the end of the tenancy and was due on the first of the month, the tenant paid a security deposit of \$820.00, and the tenant provided her forwarding address in writing on May 31, 2022.

The landlord testified the security deposit has been returned to the tenant. Submitted as evidence is a copy of a cheque stub for \$820.00, made out to the tenant, and dated June 14, 2022. Also submitted as evidence is an email from the landlord to the tenant, dated July 18, 2022, stating that the cheque was sent to the tenant on June 14, 2022. The landlord testified that it would have been sent to the tenant on the 14th or 15th of June, 2022.

In an email to the tenant dated July 22, 2022, the landlord stated that as the tenant has not replied to the landlord's previous two emails inquiring if the tenant received the security deposit cheque mailed to the tenant on June 14, 2022, the landlord would stop payment on the first cheque and issue another.

During the hearing, the landlord testified they sent a second cheque to the tenant on or around July 20, 2022.

The tenant submitted they did not know the date they received the first security deposit cheque from the landlord, but that it was about 20 days after May 31, 2022, the date the tenancy ended and the tenant provided her forwarding address in writing. The tenant submitted that they applied to the Residential Tenancy Branch on June 23, 2022 to recover the security deposit.

Analysis

Section 38(1) states:

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

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (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;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) states:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The parties agreed the tenancy ended and the tenant provided her forwarding address in writing on May 31, 2022.

The tenant submitted she had not received the security deposit from the landlord by June 23, 2022, the date she applied for dispute resolution.

The landlord testified the first security deposit cheque would have been sent to the tenant on June 14 or 15, 2022, and submitted as evidence is a copy of a cheque stub for \$820.00, dated June 14, 2022 and made out to the tenant. Also submitted as evidence is an email from the landlord to the tenant, stating that the cheque was sent to the tenant on June 14, 2022.

The parties agreed the landlord sent the tenant a cheque for the security deposit, which the tenant did not cash.

I accept the landlord's affirmed testimony and evidence that they repaid the security deposit on June 14 or 15, 2022, which is within 15 days of May 31, 2022, the date they received the tenant's forwarding address and the date the tenancy ended. I find the landlord met their obligation under section 38 of the Act and therefore is not required to pay the tenant double the amount of the security deposit.

During the hearing the landlord testified they sent a second cheque to the tenant on or around July 20, 2022. As it is not clear whether the tenant received the landlord's second cheque, I grant the tenant a monetary order for \$820.00, the amount of the security deposit, to serve on the landlord only if the tenant has not received the landlord's second cheque.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the hearing would not have been required had the tenant deposited the landlord's first cheque in a reasonable amount of time, I decline to award the tenant the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order in the amount of \$820.00, which is effective only if the tenant has not received the landlord's second cheque for the return of the security deposit. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 13, 2023

Residential Tenancy Branch