

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order to recover double the security deposit and to recover the filing fee paid for this application.

The tenant served the landlord by registered mail on April 01, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared including the landlords wife. All parties present gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to recover double his security deposit?

Background and Evidence

Both Parties agree that this tenancy started sometime in August 2005. Rent for this unit was \$1,500.00 per month and was due on the first of each month. The tenant paid a security deposit of \$725.00 at the end of July, 2005.

The tenant testifies that he gave the landlord his forwarding address verbally prior to moving from the rental unit at the end of August, 2008 and gave the landlord a letter with his forwarding address around July 2008. The tenant filed his application to recover double his security deposit on April 01, 2010 because he thought he had two years from the end of the tenancy to deal with this matter. The tenant seeks to recover double his security deposit as it was not returned within 15 days of the landlord receiving his forwarding address in writing or the end of the tenancy.

The landlord states the tenant did not move from the rental unit until September 01 or 02, 2008 and also testifies that the tenant did not give the landlord his forwarding address in writing at any time. The landlord claims the first time they saw the tenants' new address was on the application for dispute resolution sent to them in April, 2010.

Both parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenants' verbal testimony contradicts his documentary evidence. The tenant stated he gave the landlord the letter with his forwarding address in July, 2008 and yet the date on the letter containing his forwarding address is September 25, 2008.

The tenant claims he did provide the landlord with his forwarding address in writing and the landlord disputes receiving this. When the evidence of the claimant is disputed by

the respondent the burden of proof falls on the claimant to provide corroborating evidence to support his claim. The tenant has contradicted his own evidence and has provided no evidence such as a Canada Post Tracking number to show he did give the landlord his forwarding address in writing either before the tenancy ended or in September 2008. Section 39 of the Residential Tenancy Act states:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I find the tenant has not met the burden of proof in this matter to show he did give the landlord his forwarding address in writing within one year after the end of the tenancy. Consequently pursuant to section 39 of the Act the landlord may keep the security deposit of \$725.00 and the tenants' right to make a claim against it is extinguished.

Conclusion

The tenants' application is dismissed without leave to reapply.

As the tenant has been unsuccessful with his claim he must bear the cost of filing his own application.

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 27, 2010.

Dispute Resolution Officer