



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the tenant for the return of their security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlords on May 06, 2010. The tenant was unable to provide evidence of this service of the hearing documents and I allowed her application to be adjourned to allow her time to reserve the landlord or provide evidence of the original service. The hearing was reconvened on today's date and one of the landlords attended this hearing.

Both parties appeared, 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 the return of her security deposit?



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Background and Evidence

Both parties agree that this tenancy started on September 16, 2008. This was a fixed term tenancy for one year and the tenants paid \$15,000 in advance for their rent for the year. The tenant paid a \$625.00 security deposit and a \$625.00 pet deposit on September 29, 2008. The landlord has returned \$625.00 pet deposit to the tenants on October 14, 2009 when the Parties met together. The tenants have not provided the landlord with their forwarding address in writing.

The tenants seek to recover their security deposit of \$625.00 as they state this was not returned to them by the landlords. The tenants state the landlords had their address for their place of work and a telephone number to contact them but agree that they did not provide their forwarding address to the landlord. The tenants state that the address on their application is their forwarding address.

The landlord states the tenants only gave them two weeks' notice to end the tenancy and they moved from the rental unit on September 15, 2009. He agrees the tenants had paid rent up to the end of the fixed term but states their agreement allowed for another fixed term and he claims they did not re-rent the unit until November 01, 2009 so kept the security deposit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution.

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The tenants argue that although they did not give the landlord their forwarding address in writing they did give them their address on the application. However, the address on the application is classed as an address for service and not necessarily a forwarding address and I have no evidence that the landlord received this address on May 06, 2010 as declared by the tenants. The tenants were unable to provide me with evidence that the hearing documents were sent to the landlord by registered mail on this date.

Therefore as the hearing was reconvened to allow the tenants to re-serve the landlord with the hearing documents and it was determined at the reconvened hearing that the address on the tenant's application is their forwarding address normally the landlord would have 15 days from today's date to either return the security deposit or file an application to keep it. In this case I refer both parties to section 39 of the *Act*;

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.

Consequently it is my decision that they tenants did not give the landlord their forwarding address in writing pursuant to section 38(1) of the *Act* and their right to the return of the deposit is now extinguished pursuant to section 39(b) of the *Act* as more than a year has passed since the end of the tenancy so I cannot accept that the



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address on their application has been given to the landlord within the year time frame allowed under the *Act*.

As the tenants have been unsuccessful with their claim I find they must bear the cost of filing their own application.

Conclusion

The tenants' application is 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: October 25, 2010.

Dispute Resolution Officer