



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD

FF

Introduction

This is the Tenant's application for a Monetary Order for double the security deposit; and to recover the cost of the filing fee from the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

Facts on which the parties agree:

The tenancy began on November 15, 2008. The Tenant paid a security deposit in the amount of \$425.00 on November 3, 2008. The Tenant only lived in the rental unit for a few days. The Tenant did not wish to participate at the move-out condition inspection, which was done on or about November 29, 2010.

The Tenant returned the keys to the rental unit, through the Landlord's mail slot, on or about November 25, 2010.

The Tenant gave the following testimony

The Tenant testified that he dropped off the keys to the rental unit, together with written notification of his forwarding address, at the Landlord's place of business on November 25, 2010. The Tenant stated that there was no witness.

The Tenant testified that he was staying with his parents after he moved out of the rental unit and that the Landlord knew where he was. The Tenant testified that the Landlord's agent had sent e-mails to him and had phoned him on a number of occasions at his parents' house.

The Landlord's agent gave the following testimony

The Landlord's agent testified that there was no indication on the Tenant's file that he had provided the Landlord with his forwarding address when he dropped off the keys to the rental unit.

The Landlord's agent testified that she received the Tenant's forwarding address on May 14, 2010. The Landlord's agent stated that it had been more than a year since the end of the tenancy, and therefore, the Tenant was too late to claim against the security deposit.

The Landlord's witness gave the following testimony

The Landlord's witness is the person who had dealings with the Tenant at the end of the tenancy. She stated that she had told the Tenant that he could drop off the keys and his forwarding address through the mail slot at the Landlord's place of business.

The Landlord's witness stated that there was no indication on the Tenant's file that his forwarding address was provided in the envelope containing the keys to the rental unit. She stated that the Landlord's business practice after receiving a tenant's forwarding

address was to note the forwarding address on the Condition Inspection Report, and staple the Report to the tenancy agreement and place it on the tenant's file.

Analysis

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

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 39 of the 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.

This is the Tenant's application, and therefore it is the Tenant's responsibility to prove that he provided the Landlord with written notification of his forwarding address within one year after the end of the tenancy. It is not the Landlord's responsibility to prove that they did not receive the Tenant's forwarding address.

The Tenant did not provide sufficient proof that he provided the Landlord with written notification of his forwarding address on November 25, 2008, (i.e. a witness who saw him provide the Landlord with his forwarding address). The Tenant did not provide

evidence that he provided the Landlord with his forwarding address at any time within a year of the end of the tenancy and therefore his application is dismissed. The Landlord may keep the Tenant's security deposit, in accordance with the provisions of Section 39(a) of the Act.

The Tenant has not been successful in his application and is not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenant's application is dismissed.

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 13, 2010.
