



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on December 15, 1997; at which time a deposit in the sum of \$300.00 was paid. The tenants vacated the rental unit on May 1 -2, 2010, as the result of a hand-written notice ending tenancy issued by the landlord. A copy of this Notice informing the tenant they must leave by May 15, 2010, was submitted as evidence; the landlord confirmed that this was the notice that he issued.

During the hearing I informed the parties that the Notice issued was not in the approved form and did not contain the required content, as required by the Act. However, the tenants responded to the Notice issued and did vacate the unit.

The tenant submitted that in June he sent the landlord a letter that included his forwarding address; the landlord denied receipt of this letter. The tenant did not provide any evidence such as a copy of the letter or proof of delivery to the landlord.

Analysis

Based on the disputed testimony and in the absence of proof of delivery of the tenant's written forwarding address to the landlord after the tenancy ended I find that the landlord has been served with the forwarding address effective today, as contained on the tenant's Application, a copy of which the landlord confirmed he has in his possession.

Section 38(1) of the Act provides:

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) of the Act provides:

(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 landlord has fifteen days; until November 19, 2010, to comply with section 38 of the Act. If he fails to do so the tenant is at liberty to submit another Application requesting return of his deposit.

Conclusion

The tenants' Application is dismissed with leave to reapply.

The landlord has until November 19, 2010, to comply with section 38 of the Act; at which point, effective November 20, 2010, the tenant is entitled to submit an Application requesting return of the deposit paid.

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: November 05, 2010.

Dispute Resolution Officer