



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD

Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover double his security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlord. The landlord confirms receipt of the hearing documents.

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 a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to the return of double his security deposit?

Background and Evidence

This tenancy originally started in July, 2008. The tenant states he ended his tenancy in late 2009 when he went overseas for two months. He returned and his tenancy started again in January or February, 2010. The tenant states he paid a monthly rent of \$600.00 and a security deposit of \$300.00 was paid in January, 2010. This tenancy ended on March 28 or 29, 2010.



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The tenant testifies that he gave the landlords' agent his forwarding address in writing on March 29, 2010 when he approached her at the landlords' front door. The tenant states the landlord has not returned his security deposit and he seeks to recover double his deposit to the sum of \$600.00.

The tenant states because the landlord did not return his deposit he experienced stress, aggravation and had anxiety attacks. He claims he had little money coming in each month and had to use his food money to pay his security deposit at his new rental unit. He states this caused him a great deal of stress and anxiety and he seeks compensation from the landlord to the sum of \$24,400.00.

The landlords' agent testifies that her mother purchased the house from the previous landlord on January 17, 2010. This purchase was completed on March 26, 2010. The previous owner of the property and the landlord for this tenant took her mother to meet the tenants already residing in the property and paid their security deposits to her to be held in trust for the tenants. The landlords' agent testifies that after they took possession of the upper level of the house the previous owner came to see her mother and gave her one days notice that the tenants were moving out the next morning. She states this tenant did move out and he came to her door and gave her a piece of card with his phone number on it. She testifies that he did not provide his forwarding address. She states when she tried to call the tenant with this number it was not in service.

The landlords' agent testifies that since that time the tenant has never given the landlord his forwarding address and they only received this on his application for dispute resolution.

The landlords' agent disputes the tenants claim for compensation for stress as they could not return his security deposit as he did not provide a forwarding address. The landlords' agent claims the tenant also left the unit dirty and did not give the correct notice to end the tenancy. He also left his roommate living in the unit who did not pay rent. The landlords' agent claims all this has caused her mother a great deal of stress and aggravation.



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Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

The tenant argues that he did give the landlord is forwarding address on March 29, 2010. The landlord argues that the tenant only gave her his telephone number and not his forwarding address. When the tenants testimony is contradicted by the testimony of the landlord the burden of proof falls to the claimant. It is therefore, my decision that the tenant has not met this burden of proof as he has provided no witnesses or any documentary evidence to show that he did give the landlord his forwarding address in writing as declared. Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and the tenants' application is premature.

At the hearing the tenant stated that the address on the application for dispute resolution is his present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today November 18, 2010 and must either return the security deposit or file an application to keep it within 15 days of today's date pursuant to section 38 of the *Act*.

With regards to the tenants' claim of \$24,400.00 for compensation for the stress, anxiety and aggravation allegedly caused because the landlord did not return his security deposit at the end of the tenancy. As I have found that the tenant has not proven that he did give the landlord is forwarding address in writing and found that the landlord is under no obligation to return his deposit until she has received his forwarding address in writing. The tenant has failed to show



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how he mitigated his loss in this matter by avoiding a stressful situation which left him without money to buy food. I further find the burden of proof falls to the tenant to show how the landlord is responsible for any stress, anxiety or aggravation that would warrant compensation of this amount. The tenant has provided no evidence to support his claim that he suffered stress or anxiety or that the landlord acted in a willful or recklessly indifferent manner concerning the return of his security deposit. Therefore, for these accumulated reasons I dismiss this section of the tenants application.

Conclusion

The tenants' application for the return of double his security deposit is dismissed with leave to reapply.

The tenants claim for compensation 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: November 18, 2010.

Dispute Resolution Officer