



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 convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under section 38 for double the security deposit and recovery of the filing fee.

Both, the tenant and the landlord were represented at today's hearing and had opportunity to provide prior submissions. Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to double the security deposit amount claimed?

Background and Evidence

The undisputed facts before me are as follows.

The tenancy began on June 03, 2010 when the parties entered into a verbal tenancy agreement and the landlord collected a security deposit of \$800. The rent established by the agreement was that the rent was to be \$800 per month as of June 15, 2010. The tenant was to move into the rental unit on June 15, 2010. On June 12, 2010 the tenant informed the landlord that they would not be moving into the rental unit and requested back their \$800.. The landlord refused. On June 14, 2010 the tenant mailed the

landlord a letter by registered mail requesting back their deposit of \$800. The letter included a cellular phone number which the landlord was instructed to call, "to have it solved". The tenant provided a copy of the letter. The letter is not inclusive of a forwarding address to which the landlord would send the security deposit. The tenant also provided a hand written receipt, in Chinese, signed by the landlord, verbally translated by the interpreter: stating that the aforementioned \$800 deposit was for the dispute address and that it was to secure the rental unit until June 15, 2010, and that it was not refundable if the tenant determined not to move in. The landlord testified that as a result of the tenant's determination not to occupy the rental unit they suffered a loss of revenue for at least the first month of the intended tenancy.

Analysis

The burden of proof is on the applicant to prove their claim. On preponderance of the evidence and on the balance of probabilities, I have reached a decision.

Section 38(1) of the Act, in part, provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) **the date the tenancy ends, and**

38(1)(b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

This hearing does not have benefit of any evidence from the tenant that the landlord was provided a written forwarding address by the tenant in her letter to the landlord dated June 14, 2010. I find that the landlord did not receive a forwarding address in writing, and as a result, the requirements enabling the tenant entitlement to double the security deposit have not been established by the tenant.

I find that the landlord currently holds a security deposit of \$800 and the **landlord is now deemed to have received the tenant's forwarding address 5 days after the date of this decision.** Section 38 of the Act provides that the landlord has 15 days to either file for dispute resolution to make a claim against the security deposit **or** return the original amount of \$800 to the tenant. If the landlord fails to do either of these, the tenant may be entitled, on application, to double the amount of the original \$800.

As a result of all the above, I find that the tenant's application for dispute resolution is premature, and I dismiss the application with leave to reapply, if necessary

Conclusion

The tenant's application **is dismissed with 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*.