



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This matter dealt with an Application by the Tenants for the return of a security deposit plus compensation equal to the amount of the security deposit due to the Landlord's alleged failure to return it within the time limits required under the Act. The Tenants also applied for an Order that the Landlord comply with the Act and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit and if so, how much?

Background and Evidence

This tenancy started on July 1, 2009 and ended on June 15, 2010 when the Tenants moved out pursuant to a Mutual Agreement to End the Tenancy. Rent was \$1,800.00 per month. The Tenants paid a security deposit of \$900.00 at the beginning of the tenancy.

The Tenant (M.M.) said he gave his forwarding address to an agent for the Landlord via e-mail on June 7, 2010. The Tenant said the Landlord subsequently sent some invoices to him at that address. The Landlord denied receiving the Tenant's forwarding address and claimed that the invoices had been sent to the Tenants at the rental unit address.

The Tenant also said that he asked the Landlord if he could use the security deposit in payment of ½ of the rent for June 2010 but the Landlord did not agree and as a result, he paid \$900.00 on June 28, 2010 which was acknowledged in writing by an agent for the Landlord on the Mutual Agreement to End the Tenancy. The Landlord argued that there was an agreement to apply the Tenants' security deposit to rent for June 2010 and that he deemed the Tenants' payment of \$900.00 to be in payment of damages to the rental unit although he admitted that he did not provide them with invoices for the alleged damages until approximately a month later. The Landlord also argued that the person who signed the Mutual Agreement to End Tenancy and the acknowledgement of



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the Tenants' payment as rent was not his agent and did not have authority to act on his behalf.

Analysis

Section 38(1) of the Act says that a Landlord's obligation to return a security deposit only arises 15 days after the tenancy ends or 15 days after the Tenant gives his forwarding address in writing (whichever occurs later).

I find that there is insufficient evidence to conclude that the Tenants gave their forwarding address in writing to the Landlord. Firstly, the Landlord disputed receiving a forwarding address in writing from the Tenants and the Tenants provided no other evidence in support of that allegation. Secondly, electronic correspondence (ie. e-mail or text messaging) does not satisfy the requirement of writing under s. 38(1) of the Act. Consequently, the Tenants' application is dismissed with leave to reapply 15 days after they serve the Landlord with their forwarding address in writing.

Conclusion

The Tenants' 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*.

Dated: December 01, 2010.

Dispute Resolution Officer