



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it within the time limits required under the Act.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of his security deposit and if so, how much?

Background and Evidence

This tenancy started on August 1, 2009 and ended on August 31, 2010 when the Tenant moved out. Rent was \$750.00 per month. The Tenant paid a security deposit of \$375.00 on July 6, 2009.

The Tenant said he gave his forwarding address in writing to an agent of the Landlord on August 30, 2010 together with his keys following a move out inspection. The Landlord denied that the person to whom the Tenant gave his keys was an agent of the Landlord and also denied that the Tenant gave her his forwarding address in writing. The Landlord's witness (G.T.) admitted that she took the Tenant's keys on August 30, 2010 but denied receiving a forwarding address in writing from him or that she participated in a move out inspection with him.

The Tenant received a cheque in the amount of \$300.00 from the Landlord at the rental property on September 18, 2010. The Landlord (Q.S.) said she wrote the cheque on September 10, 2010 but withheld it from the Tenant until he returned a moving dolly. The Landlord argued that a move out inspection was not done because the Tenant failed to arrange one with the building manager.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for

dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

The Tenant has the onus of proof in this matter and must show that he gave his forwarding address to the Landlord. Given the contradictory evidence of the Parties on this point and in the absence of any corroborating evidence from the Tenant to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenant gave the Landlord his forwarding address in writing. However, ***I find that as today's date, the Landlord has received the Tenant's forwarding address in writing which is the Applicant's address set out on his Application for dispute resolution.*** Consequently, the Landlord must either return the unpaid balance of the Tenant's security deposit of \$75.00 to him within 15 days of this decision or make an application for dispute resolution to make a claim against it.

However, sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for dispute resolution to get compensation for damages (such as cleaning or repairs) however she may not apply for dispute resolution to keep all or part of the Tenant's security deposit to pay for those damages.

In summary, unless the Landlord has a claim against the balance of the Tenant's security deposit for something other than damages to the rental unit, the Landlord must return the balance of the Tenant's security deposit to him within 15 days of the date of this decision or the Tenant will be at liberty to re-apply under s. 38(6) of the Act for compensation equal to the amount of his security deposit. If the Landlord wishes to make a claim against the unpaid balance of the Tenant's security deposit for something other than damages to the rental unit, then the Landlord must make an application for dispute resolution within 15 days of this decision.

Conclusion

The Tenant's application is dismissed with leave to reapply if the Landlord does not return the balance of the security deposit or apply for dispute resolution to make a claim against the balance of the deposit within 15 days of this decision. 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: January 24, 2011.

Residential Tenancy Branch