



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in February of 2010; that the Tenant paid a security deposit of \$600.00 on January 02, 2009; that this tenancy ended on December 01, 2010 or December 02, 2010; that the Tenant did not give the Landlord written authority for the Landlord to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that she did not return the security deposit as the Tenant owed her money for damages to the rental unit and that the Tenant verbally advised her that she could keep the security deposit for money owed. The Landlord was repeatedly advised that she has the right to file an Application for Dispute Resolution if she believes the Tenant owes her money, but she was not permitted to discuss those claims at this hearing.

The Tenant stated that she left the keys for the rental unit on a window sill in the rental unit on December 02, 2010. She stated that she placed the keys on top of a note in which she provided the Landlord with her forwarding address.

The Landlord stated that she located the keys to the rental unit on December 02, 2010 but she did not locate the note with the Tenant's forwarding address.

The Tenant submitted a letter from her mother, in which her mother stated that she observed her daughter leave her forwarding address on a window sill inside the rental unit on December 01, 2010. The Tenant stated that the date in her mother's letter is incorrect, and that the address was left on December 02, 2010.

Analysis

On the basis of undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$600.00; that the Landlord did not return any portion of the security deposit; that the Tenant did not give the Landlord written authorization to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit; and that the Landlord did not have authorization to retain any portion of it.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

While I accept the Tenant's evidence that she left her forwarding address on a window sill in the rental unit, I find that the Tenant submitted insufficient evidence to establish that the Landlord actually received that address. In reaching this conclusion I was heavily influenced by the Landlord's testimony that she did not find the Tenant's forwarding address.

In determining this issue I find that both parties could be telling the truth, as it is entirely possible that the note that was left in the rental unit by the Tenant was overlooked by the Landlord. In my view, serving a document by leaving it on a window sill is not a particularly reliable method of serving a document, as it could easily be lost or mistakenly considered to be garbage. Leaving a document on a window sill is not, in my view, the same as attaching it to a door or other conspicuous place in the rental unit.

As the Landlord is not required to return the security deposit until she has received the Tenant's forwarding address in writing, and I am not convinced that the Landlord had received the Tenant's forwarding address in writing by the time the Tenant filed her Application for Dispute Resolution, I find that the Tenant filed her Application for Dispute Resolution prematurely. I therefore dismiss the Tenant's Application for Dispute Resolution with leave to reapply, as the Landlord was not obligated to return the security deposit at the time this Application for Dispute Resolution was filed.

Although the Landlord was served with the Tenant's forwarding address when she was served with the Tenant's Application for Dispute Resolution, I find that this address was provided as a service address for documents relating to this hearing and not as a forwarding address for the purposes of returning the security deposit. As the issue of the security deposit was to be determined at this hearing, I find it was reasonable of the Landlord to withhold payment of the security deposit until this hearing was concluded.

Conclusion

Pursuant to section 71(2)(b) of the Act, I find that the Landlord received the Tenant's forwarding address on March 07, 2011, which is five days after this decision is being mailed to both parties.

I find that the Landlord has fifteen days from March 07, 2011 to comply with section 38 of the *Act*. The Tenant retains the right to file another Application for Dispute Resolution if the Landlord has not complied with section 38 of the *Act* by that time.

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: March 02, 2011.

Residential Tenancy Branch