



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the tenants sent and the landlord received the landlord's dispute resolution hearing package by registered mail sent on December 13, 2010. I am satisfied that the tenants served this package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a return of their security deposit from the landlord? Are the tenants entitled to recover their filing fee for their application from the landlord?

Background and Evidence

This month-to-month tenancy commenced on June 1, 2010. Monthly rent was set at \$1,195.00, payable in advance on the first of the month. The landlord continues to hold the tenants' \$600.00 security deposit paid on May 30, 2010.

There was contradictory oral testimony provided by the parties in attendance regarding the date when the tenants vacated this unit. One party said that the tenants vacated by November 28, 2010, while the other said that the tenants did not vacate until December 2010.

The male tenant who attended the hearing (the tenant) testified that he was uncertain when or how the other tenant provided a forwarding address to the landlord for the return of the tenants' security deposit. The tenant said that he did not think that the other tenant sent anything in writing to the landlord in December 2010 as he likely gave their new forwarding address to the landlord by telephone. The landlord testified that he has never received the forwarding address from the tenants in writing. He said that he

had to contact the Residential Tenancy Branch in order to locate the tenants for the purposes of responding to their application for dispute resolution.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1) of the *Act*, then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6) of the *Act*). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address. In this case, the tenant testified that he did not believe that the tenants provided a forwarding address to the landlord in writing. Therefore the landlord's obligations to return the security deposit has not yet occurred.

Although the landlord was able to obtain the tenants' forwarding address in response to the tenants' current application for dispute resolution, this is not the method by which tenants are required to notify landlord's of their forwarding address.

Since the tenants have not provided the landlords with their forwarding address in writing, I dismiss the tenants' application for dispute resolution with leave to reapply once they have complied with the *Act*. The landlord has 15 days from the time that the tenants send their forwarding address in writing to the landlord to comply with the above-noted provisions of section 38(1) of the *Act*. The tenants can apply for dispute resolution after the expiration of that 15-day period if the landlord has not returned their security deposit or filed an application for dispute resolution to retain all or a portion of that security deposit.

Conclusion

I dismiss the tenants' application to obtain a return of their security deposit because they have failed to provide the landlord with written notice of their forwarding address. They remain at liberty to reapply for the return of their security deposit if they have not obtained their security deposit within 15 days of sending their forwarding address to the landlord.

Since the tenants were premature in their application, I make no monetary award regarding the recovery of their filing fee for their application.

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*.