



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the tenant to recover double her security deposit and to recover her filing fee paid for this application.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to the return of double her security deposit?

Background and Evidence

This tenancy originally started December 05, 2005 for a fixed term tenancy of one year. A new tenancy agreement was entered into on December 01, 2008 for another fixed term due to end on January 31, 2009. The tenancy ended on January 31, 2009. The tenant filed her application on January 31, 2011.

The tenant testifies that she gave the landlord her forwarding address in writing when she returned the keys to the unit. The tenant testifies that she gave the landlord the dispute address as her forwarding address as she had arranged for her mail to be re-directed from Canada Post.

The landlord disputes receiving the tenants forwarding address the landlord states she did receive the tenants keys around January 31, 2009 but the envelope did not contain a forwarding address and the tenants son who delivered the keys, verbally told the landlord to return the security deposit to the dispute address.

Analysis

The *Residential Tenancy Act*: s. 60(1)(2) states that:

Latest time application for dispute resolution can be made

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

To clarify this I refer the applicant to the *Interpretation Act*: s. 25(2)

Calculation of time or age

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

With reference to the above this means that the last day the tenants' application could have been made would be January 30, 2011.

The *Residential Tenancy Act*; s. 66(1) allows a Dispute Resolution Officer to extend a time limit only in exceptional circumstances. I asked the applicant if she could determine any reason why she filed her application so late. However, the tenant was unable to provide any information or reasons which would allow me to determine an 'exceptional circumstance'

and states she had come across the documents and decided to file an application to recover her filing fee as she did not realize she had two years to claim her filing fee back.

In any event the tenant has provided no evidence to support her claim that she did give the landlord her forwarding address in writing at the end of the tenancy. Section 39 of the *Act* says if a tenant does not provide the landlord with a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit and the right of the tenant to the return of the deposit is extinguished.

Therefore I find the landlord has a right under section 39 of the *Act* to keep the security deposit.

Conclusion

The tenants' application is dismissed in its entirety without 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: April 07, 2011.

Residential Tenancy Branch