



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD 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 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.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

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 on June 04, 2010; that the Tenant paid a security deposit of \$900.00; that the tenancy ended on September 04, 2010; that the Tenant did not authorize the Landlord to retain any portion of 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 Agent for the Tenant stated that the Tenant provided the Landlord with her forwarding address, by regular mail, on October 05, 2010. The Tenant submitted a copy of a letter, dated October 05, 2010, in which the Tenant provided the Landlord with her forwarding address. The Agent for the Tenant stated that the Tenant told the Landlords to communicate with her via her real estate agent, although she did not provide them with written direction in this regard.

The female Landlord stated that they did not receive the Tenant's forwarding address in the mail prior to the Tenant filing an Application for Dispute Resolution. The Landlord submitted a series of emails between the Landlord and the Tenant's real estate agent, dating from October 13, 2010 to October 17, 2010. The Landlord contends that these emails corroborate the testimony that they did not receive the Tenant's forwarding address, as they would have dealt directly with the Tenant if they had her forwarding address.

Analysis

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$900.00; that this tenancy ended on September 04, 2010; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord 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.

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation for damages or loss, not on the person who is denying the damage or loss. In these circumstances, the burden of proving that the Tenant provided the Landlord with her forwarding address, in writing, rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that she mailed her forwarding address to the Landlord, via regular mail, on October 05, 2010. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Agent for the Tenant's statement that the forwarding address was sent or refutes the female Landlord's testimony that it was not received. In reaching this conclusion I was cognizant of the possibility that both parties are being truthful, as it is entirely possible that the letter was lost or incorrectly delivered by Canada Post.

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.

As the Tenant has failed to establish that the Landlord had received the Tenant's forwarding address, in writing, prior to filing this Application for Dispute Resolution, I find that the Tenant filed this Application for Dispute Resolution prematurely. As the Tenant filed the Application for Dispute Resolution prematurely, I dismiss the Tenant's

application for the return of her security deposit and to recover the filing fee.

Conclusion

The Landlord remains entitled to retain the Tenant's security deposit until they receive a forwarding address for the Tenant, at which time they are obligated to dispose of the deposit in accordance with the *Act*. I do not find that the service address provided with the Application for Dispute Resolution serves as a forwarding address provided for the purposes of returning the security deposit, as it was provided to the Landlord for the purposes of serving documents related to these proceedings.

The Tenant retains the right to file another Application for Dispute Resolution seeking the return of her deposit if the Landlord does not comply with section 38(1) after the Landlord receives the Tenant's forwarding address.

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: June 13, 2011.

Residential Tenancy Branch