



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a monetary order for the return of double the security deposit and to recover the cost of the filing fee from the Landlord.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 16, 2011. Mail receipt numbers were provided in the Tenant's evidence. The Agent confirmed receipt of the hearing documents and the evidence.

The parties appeared at the teleconference hearing, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant agreed for the Landlord to retain a portion of the security deposit?
2. If so, was the balance owed to the Tenant returned to the Tenant in accordance with the *Act*?

Background and Evidence

At the outset of the Hearing the Landlord confirmed the Limited Company was the Landlord and the person named on the application is their Agent. The documentary evidence supports this information. Based on the aforementioned I hereby amend the application to include the Landlord's name as a respondent pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

The Agent confirmed the parties had a tenancy agreement that began on August 1, 2009 and ended November 30, 2010. The tenancy agreement documents that were provided to the Tenant at the outset of the tenancy included the "Tenant cleaning agreement" as per the copy provided in the Landlord's evidence. The Agent met with

the Tenant approximately one month before the Tenant gave notice to end the tenancy. During this meeting he discussed with the Tenant the process that must be followed to cancel the tenancy agreement and the cleaning requirements as per the cleaning agreement.

On October 29, 2010 the Tenant provided his written notice to the Agent which included an incorrect forwarding address. The Agent advised that on this date he went over the cleaning requirements and charges with the Tenant a second time at which time the Tenant asked that the Landlord look after steam cleaning the carpets and cleaning the window coverings.

The Tenant testified and confirmed he requested the Agent to look after the cleaning of the carpets and window coverings; however he states he was never told how much these items would cost. I confirmed with the Tenant that he received a copy of the cleaning agreement and that he discussed these matters with the Agent. I then pointed out that the amounts that would be charged to the Tenant are clearly listed in the Tenant cleaning agreement. He responded by saying "my bad" I did not read it.

The Tenant then advised that the balance of his deposit was not returned to him in the required time frames. I noted that his address was listed incorrectly on his notice to end tenancy to which he replied that if the Landlord attended his new address to deliver his security deposit cheque they would have seen his name on the apartment list and figured out which unit he lived in. He is of the opinion that it is the Landlord's responsibility to contact him if the address was listed incorrectly. He confirmed that he received the replacement cheque that to his knowledge it cleared the bank.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included among other things, copies of the Tenant's notice to end tenancy with his forwarding address dated October 29, 2010, the tenancy agreement, move out inspection report, statement from the Landlord, and a copy of the "Tenant's cleaning agreement".

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this case the evidence proves the Tenant was provided, in writing, with the amount that would be charged against his security deposit for cleaning the carpets and window coverings. Furthermore the evidence proves the Tenant provided the Landlord with an incomplete mailing address.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

I accept the Landlord's submission that they were not provided with the Tenant's full forwarding address until they received his application for dispute resolution and that upon receipt of that application they sent the Tenant the security deposit refund.

Based on the aforementioned I find the Tenant has not met the burden of proof to establish his claim, therefore, I dismiss his application without leave to reapply.

As the Tenant has not been successful with his application I find he must bear the burden of the cost of making his application.

Conclusion

I HEREBY DISMISS the Tenant's application, 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: June 24, 2011.

Residential Tenancy Branch