



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by the Act.

The Landlord admitted at the beginning of the hearing that she had not served the Tenant with her evidence package and she sought an adjournment of this matter in order to do so. However, I find that the Landlord received the Tenant's hearing package approximately 2 months ago which included instructions about serving evidence on the other party. Consequently, I dismissed the Landlord's application for an adjournment and excluded her evidence pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and if so, how much?

Background and Evidence

This tenancy started on September 1, 2009 and ended on April 30, 2011. Rent was \$1,150.00 per month. The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The Tenant said he gave the Landlord his forwarding address in writing on or about April 15, 2011 which the Landlord denied. The Tenant said he advised the Landlord by telephone in August 2011 that he had moved and in mid-September 2011 the Landlord returned \$100.00 of the security deposit (\$50.00 to him and \$50.00 to his co-tenant) with a list of items she had deducted from it in the amount of \$364.65. The Parties agree that the Landlord did not have the written authorization of the Tenant or his co-tenant to keep the security deposit.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever

is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that he (or his co-tenant) provided the Landlord with a forwarding address in writing. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the Tenant has not provided sufficient evidence to show that he gave the Landlord his forwarding address in writing as required by s. 38(1) of the Act. As a result, the Tenant's application is dismissed with leave to reapply.

The Tenant confirmed at the hearing that his address for service stated on his Application for Dispute Resolution is his forwarding address. Consequently, ***I find that as of this date, the Landlord has the Tenant's forwarding address in writing and must within 15 days, or no later than February 9, 2012, do one of the following:***

- Obtain the Tenant's written consent to keep the security deposit;
- Return the security deposit to the Tenant; or
- File an application for Dispute Resolution to make a claim against the security deposit.

If the Landlord does not take one of these steps by February 9, 2012, then the Tenant may re-apply for double the amount of the security deposit.

Conclusion

The Tenant's application is dismissed with 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: January 25, 2012.

Residential Tenancy Branch