



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of double the security and or pet deposit, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed that he entered into a written tenancy agreement with the female applicant and not the male applicant to this dispute. He could not confirm or deny if the male applicant was listed as an occupant on the tenancy agreement however he did confirm that he knew the male as the female Tenant's husband.

The parties agreed the written tenancy agreement was for a month to month tenancy that began September 1, 2009. Rent was payable on the first of each month in the amount of \$1,300.00 and the Tenants paid \$600.00 in August 2009 as the security deposit. The tenancy ended June 30, 2011 after the Landlord provided the Tenants one month's notice that the house had been sold. The Landlord affirmed the title of the

property was transferred July 1, 2011. No move in inspection report was completed and no move out inspection report was completed.

The Landlord confirmed he has retained the security deposit, he does not have an order authorizing him to keep the deposit, and he does not have the Tenants' written permission to keep the deposit. He advised the Tenants have never provided him with their forwarding address.

The Tenant confirmed they did not provide the Landlord with their forwarding address, in writing, however they did send him a text message letting him know his new landlord's phone number for their current address.

Analysis

The Tenants have applied for the return of double their security deposit and must meet the burden of proving they gave the Landlord a forwarding address in writing, as required by section 38 of the *Residential Tenancy Act*, prior to applying for dispute resolution.

Section 39 of the *Act*, stipulates that if a tenant does not give a landlord 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 security deposit is extinguished.

The burden of proving a claim lies with the person making the claim and when it is just that person's word against the word of the other, that burden of proof is not met. The applicant claims that he sent their forwarding address to the landlord via text message; however the Landlord denies ever receiving a forwarding address from the Tenants.

The *Residential Tenancy Act* does not allow for or recognize text messages as a method of written communication. Therefore in the absence of any proof that a forwarding address **in writing** was given to the Landlord, it is my finding that, at the time the Tenants applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature and I dismiss the application with leave to reapply.

Conclusion

I HEREBY DISMISS this application, 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: February 07, 2012.

Residential Tenancy Branch