



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for the return of the security deposit under section 38 of the *Residential Tenancy Act* (the Act).

Both, the tenant and the landlord were represented at today's hearing and each provided prior document evidence and their testimony.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The undisputed relevant facts before me provided by both parties are as follows.

The tenancy began on November 01, 2009 and ended on August 31, 2010. The landlord collected a security deposit of \$1000.00 at the outset of the tenancy. At the end of the tenancy the parties conducted a move out inspection, but did not arrive at agreement as to how the security deposit would be administered, or dealt with. I do not have benefit of the condition inspection report which both parties agree was completed upon ending the tenancy. Regardless, the tenant agrees with the landlord that the landlord was owed \$120.78 for their share of utilities of gas and electricity, and the tenant still agrees with this deduction. The landlord determined to make additional deductions from the original security deposit and provided the tenant with a partial return of the deposit in the amount of \$439.42.

The tenant provided evidence that on February 24, 2012 they sent the landlord a registered letter requesting the balance of the security deposit (minus the agreed \$120.78) for \$439.80, along with their forwarding address, in writing. The landlord

acknowledged that near the end of February 2012 they received the tenant's letter and forwarding address in writing.

Analysis

On preponderance of all the relevant evidence in this matter I have reached a decision.

Section 38(1) of the Act provides as follows (emphasis for ease)

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Section 39 of the Act states, (emphasis for ease)

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I find that the landlord may have failed to repay all of the security deposit upon the tenancy ending; however, I find that upon the tenancy ending August 31, 2010 the landlord was not legally obligated to repay the security deposit or file an application for dispute resolution to claim it until provided with a forwarding address by the tenant *in writing*. The tenant did not provide the landlord with a forwarding address *in writing* until 18 months after the tenancy ended. Therefore, I find that as provided by **Section 39** of the Act, the landlord became entitled to retain any security deposit after one year after

the tenancy ended (August 31, 2011); and, as provided by the Act, the right of the tenant to its return was, at the same time, extinguished. As a result, I find the tenant is no longer entitled to the return of the security deposit. The tenant's application is therefore **dismissed**, without leave to reapply.

Conclusion

The tenant's application is **dismissed**, 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 04, 2012

Residential Tenancy Branch