



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes MNSD, FF

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$650.00 and a request for an order for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- On April 23, 2010 she paid a security deposit of \$325.00 and moved into the rental unit on May 1, 2010.
- She moved out of the rental unit on March 28, 2012 and on April 4, 2012 provided the landlord with a forwarding address in writing by registered mail.
- The landlord has failed to return any of her security deposit and therefore she is requesting an order for return of the security deposit doubled as required by the Residential Tenancy Act.

The respondent testified that:

- He was not the landlord when the tenant moved into the rental unit, the landlord was his ex-wife and the security deposit was paid to her.

- The original agreement with his ex-wife expired at the end of October 2010 and he took over as landlord and signed a new contract with the tenant starting May 1, 2010.
- His ex-wife did not transfer the security deposit to him and therefore the tenant should be going after his ex-wife for return of her deposit.
- He did not return the deposit, because this was a new contract and no security deposit was paid to him under the new contract.

Analysis

It is my finding that the landlord was required to return the security deposit to the tenant even if his ex-wife did not transfer the deposit to him when he took over the property.

Section 93 of the residential tenancy act states:

93 The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion.

Therefore the security deposit is considered to be held by whomever takes on the obligations of the landlord and in this case that is the respondent.

The landlord has argued that this is a new tenancy, and therefore since no security deposit was paid to him under the new contract he should not have to return any security deposit. This is however not considered a new tenancy, it's simply a new contract signed during the tenancy and therefore as stated above the tenants security deposit is still considered to be in place.

Further the Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on March 28, 2012 and the landlord is deemed to have had a forwarding address in writing by April 9, 2012, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a security deposit of \$325.00 and therefore the landlord must pay \$650.00.

I also order recovery of the \$50.00 filing fee.

Conclusion

I have issued an order for the respondent to pay \$700.00 to the applicant.

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: July 23, 2012.

Residential Tenancy Branch