



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 a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the tenant established an entitlement to return of double the security deposit?

Background and Evidence

The tenancy commenced in September 2011 and a \$725.00 security deposit was paid by the tenant. A move-in inspection report was not prepared by the landlords. The tenant vacated the unit May 14 or 15, 2012. The tenant sent the landlord an email that included his forwarding address on May 14, 2012. The tenant did not authorize any deductions from his security deposit in writing. On May 29, 2012 the landlords sent a cheque to the tenant via registered mail to refund the security deposit less a \$334.35 deduction.

The landlords were of the position the tenant damaged rental unit and furnishings and made deductions from the security deposit to recover the loss associated to the damage.

The tenant was of the position that his email of May 14, 2012 constitutes written communication.

Analysis

As the parties were informed during the hearing, the landlords' claims of damage to the rental unit were not issues for me to decide for this proceeding as the landlords had not made an application for dispute resolution. The purpose of this hearing was to

determine whether the landlords complied with the Act with respect to the administering the security deposit.

Without the written authorization of the tenant or a Dispute Resolution Officer to make deductions from a security deposit, section 38(1) of the Act provides that a landlord has 15 days to either return a security deposit to the tenant or file an Application for Dispute Resolution to request authorization to retain any part of the security deposit. The 15 day time limit begins after the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever date is later. Where a landlord fails to comply with section 38(1) then the landlord must pay the tenant double the security deposit pursuant to section 38(6) of the Act.

I find the tenant had not provided a forwarding address to the landlords in writing in a manner that complies with the Act prior to filing this application. Section 88 provides that all documents, other than certain excluded documents, must be given or served to the other party in one of the permissible ways provided under section 88(1). Sending a document via email is not a permissible method of giving the other party a document. Nor is email communication otherwise recognized in the Act.

Since the tenant did not give the landlords his forwarding address in writing in a manner that complies with the Act, I find the tenant's request for return of double the security deposit was premature and his request for double is denied.

Nevertheless, I do order the landlords to return to the tenant the balance of the security deposit of \$334.35 as I have found the landlords extinguished any right to make deductions from the security deposit for damage. The Act provides that a failure to prepare and provide condition inspection reports shall result in an extinguishment of the right to make deductions or claims against the security deposit for damage. However, the landlords remain at liberty to make their own Application for Dispute Resolution to seek compensation for damage if they wish to pursue that matter.

As the tenant's application had merit I award the tenant recovery of the filing fee. The tenant is provided a Monetary Order for the total sum of \$384.35 to serve upon the landlords and enforce as necessary.

Conclusion

The tenant was partially successful and has been provided a Monetary Order in the amount of \$384.35 to serve upon the landlords and enforce as necessary.

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: August 14, 2012.

Residential Tenancy Branch