



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 the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and two of the landlords.

During the hearing I attempted to call in a witness on behalf of the tenant. While someone answered the phone the witness was called to the phone and I was put on hold for 4 minutes with no one coming to take the call. I returned into the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in February/March 2010 for a monthly rent of \$1,050.00 due on the 1st of each month with a security deposit of \$525.00 paid. The parties also agree the tenancy ended on or about August 29, 2011 in accordance with a Dispute Resolution Decision granted on August 12, 2011.

The tenant testified that she had left the keys and her forwarding address in a note on a partial wall in the rental unit. The two landlords in attendance both testified that they had never received a forwarding address from the tenant or the keys to the rental unit. The landlords testified that the first time they received her forwarding address was in her Application for Dispute Resolution.

The parties agree that one of the landlords had phone and email contact with the tenant's mother. The tenant submitted that her mother had attempted to contact the landlords on October 13 and 17, 2011 and November 8, 9, 12, and 15, 2011 but that the landlord's never responded.

The landlord testified that he had emailed the tenant's mother a summary, including pictures of the damage to the rental unit at the end of the tenancy. The tenant testified the landlords had not emailed anything to her mother.

Analysis

To be successful in a monetary claim the party making the claim has the burden to provide sufficient evidence to establish they are entitled to the claim and the amount of the claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As two of the three landlords have disputed the tenant's statement that she provided the landlords with her forwarding address in a note left in the rental unit, the burden remains with the tenant to substantiate that she had provided them with her address. In the absence of any corroborating evidence I find the tenant has failed to establish she provided the landlords with her forwarding address until she provided them with her Application for Dispute Resolution after September 26, 2012.

Section 39 states despite other provisions of the *Act* 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.

As the tenancy ended on August 29, 2011, I find the tenant had until August 28, 2012 to provide the landlords with her forwarding address in writing. As I have found she provided them with her forwarding address after September 26, 2012 I also find the tenant has extinguished her right to claim the deposit pursuant to Section 39.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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: December 18, 2012.

Residential Tenancy Branch