



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

Both parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

Is the tenant entitled to a refund of the security deposit?

Preliminary Matter

The landlord testified that he did not receive the hearing package until three days ago, and disputed that the hearing package was properly served because the tenant had mailed it to the address of the rental unit.

In regard to the landlord's objection that the hearing package had been sent to the rental unit address, I find that both sections 88 and Section 89 of the Act permit a landlord to be served documents :

“if the person is a landlord, to the address at which the person carries on business as a landlord;”

Pursuant to the Act, I find the tenant was fully entitled to serve any documents to the dispute address where the landlord normally carried on business and the tenant did so.

Despite the tenant's testimony that the documents were sent by registered to the rental unit address on or before September 15, 2012, the tenant was not able to provide the Canada Post tracking number of the registered mail.

I therefore accept that the landlord was served on December 2, 2012.

Background and Evidence

On October 1, 2011 the parties entered into a tenancy agreement and the tenant paid a \$575.00 security deposit. The tenancy ended on October 1, 2012 and the landlord refunded the tenant's security deposit in the form of a cheque, which later failed to clear.

The landlord testified that a stop was placed on the cheque based on the deficient condition that the rental unit was left in by the tenant and the landlord felt that the tenant owed him compensation for the costs of cleaning. However, both parties agreed that no move-in, nor move out condition inspection reports were ever completed.

The tenant admitted that he did not give the landlord his forwarding address in writing prior to applying for the dispute resolution hearing. The landlord also testified that the tenant's forwarding address was never provided.

Analysis

In regard to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue.

Section 38 (1) of the Act states that within 15 days after the later of

- (a) the date the tenancy ends, and

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

the landlord must do one of the following:

- (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;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) provides that if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find insufficient proof to verify that the tenant's forwarding address was ever provided to the landlord until it was disclosed on the tenant's application when the hearing package was received by the landlord on December 2, 2012.

However, notwithstanding the above, I find that the landlord currently holds a security deposit of \$575.00 in trust for the tenant and is obligated under section 38 to return this amount.

I grant the tenant an order under section 67 for \$625.00, which includes the \$575.00 security deposit and the \$50.00 filing fee paid to bring this application. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant's application was successful and a monetary order for the refund of the security deposit was granted.

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 04, 2012.

Residential Tenancy Branch