



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The tenants seek recovery of their security deposit and the filing fee paid for this application.

I accept the evidence of the tenant that the landlord was served with the tenants' application and notice of hearing sent by registered mail on February 18, 2013.

Despite being served with notice of this claim and this hearing the landlord did not attend.

The tenant gave evidence under oath.

Issues(s) to be Decided

Is the tenant entitled to recovery of the security deposit and the filing fee paid for this application?

Background and Evidence

The tenant submits that she telephoned the landlord on February 8, 2013 to advise that they would not be moving into the rental unit and to ask for the damage deposit to be returned to them. The tenant says that the landlord responded that she needed to speak with her son about deposit. To date the tenants have not received their deposit.

Analysis

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either

return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with Section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (Section 38(6)). If tenants do not supply their forwarding address in writing within a year, the landlord may retain the deposit.

The triggering event is the provision by the tenants of their forwarding address to the landlord **in writing** requesting the return of the deposit. In this case the tenant's evidence is that she called the landlord to seek the return of the deposit. This is not sufficient and the application is therefore dismissed, with leave.

However, as the landlord has now received the tenants' forwarding address as set out on the tenants' Application I find that the landlord is now on notice pursuant to Section 38 and must either return the deposit or make an application seeking to retain the deposit. The landlord now has 15 days commencing May 10, 2013 to do so. If the landlord does not return the deposit or make an application seeking to retain the deposit within 15 days, the tenants are at liberty to reapply for the return of double the deposit as set out in Section 38 of the *Residential Tenancy Act*.

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: May 08, 2013

Residential Tenancy Branch

