



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on July 18, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenants in attendance.

At the start of the hearing the Landlord said the address on the Notice of Hearing was incorrect. The Notice showed his address to be 329 and his address is 32909. The Tenants' application showed the address to be correct so the error was in the Notice of Hearing only. The Landlord said he did receive the hearing package. The Arbitrator accepted the Tenants service of the hearing package and the hearing continued.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started on October 10, 2012 as a month to month tenancy. The tenancy ended June 3, 2014. Rent was \$800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy. The parties agreed a move in condition inspection report was complete and signed and a move out condition inspection report was complete but not signed by the Tenants and the Tenants did not receive a copy of the move out condition inspection report.

The Tenants said that they moved out of the rental unit on June 3, 2014 and gave the Landlord a letter with their forwarding address on it in the first part of June, 2014. The Landlord said he did not receive this letter and so he does not have the Tenants forwarding address.

The Tenants said they made this application because the Landlord has refused to return their security deposit of \$400.00.

The Landlord said he retained the Tenants' security deposit because there was damage to the walls of the unit, to the air tight fire place and to the slate mantel on the fire place. The Landlord continued to say he has not made an application to the Residential Tenancy Branch to retain the Tenants' security deposit for damages.

Analysis

Pursuant section 38 of the Act a Landlord **must** return the Tenants' security deposit or make application to retain the Tenants' security deposit within 15 days of the end of tenancy and/or 15 days after receiving the Tenants' forwarding address in writing whichever is the latter. In this situation the tenancy ended June 3, 2014 and the Tenants said they provide the Landlord with a letter containing their forwarding address but the Tenants have not provide proof of that letter. The Landlord said he did not receive this letter and he does not have the Tenants forwarding address. Therefore I find it is unclear if the Landlord received the Tenants forwarding address. Due to the lack of evidence to prove that the forwarding address was given to the Landlord, I find that the deemed date that the Landlord has received the Tenants forwarding address in writing is at the Hearing today December 10, 2014. Consequently I find the Landlord has 15 days from today or by December 25, 2014 to make an application to retain the Tenants deposit or to return the deposit to the Tenants.

As the Tenants were not successful in this matter I order the Tenants to bear the cost of the filing fee of \$50.00 that they have already paid.

The Tenants' application is dismissed with leave to reapply.

Conclusion

The Tenants' application is dismissed with leave to reapply.

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 10, 2014

Residential Tenancy Branch

