



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

The female Tenant stated that on October 05, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were personally served to the Landlord. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

Background and Evidence

The Tenant contends:

- That the Landlord and both Tenants in attendance at this hearing entered into a verbal tenancy agreement for this rental unit;
- that the Landlord and the Tenant agreed the tenancy would begin on September 01, 2014;
- that the Landlord and the Tenant agreed that the rent would be \$3,500.00;
- that the Tenant agreed to pay a security deposit of \$1,750.00;
- that the Tenant paid a security deposit of \$1,750.00 and received a receipt for only \$1,700.00;
- that shortly before the tenancy was to begin the Landlord told the Tenant he wanted another security deposit of \$1,700.00;
- that the Tenant refused to pay the additional security deposit so the Landlord did not give them the keys to the rental unit;
- that when the Tenant asked for their security deposit the Landlord told them he was keeping it in compensation for lost rental income;

- that the Tenant did not authorize the Landlord to retain the security deposit;
- that the Landlord did not return any portion of the security deposit;
- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and
- that the Tenant first provided the Landlord with a forwarding address, in writing, when the Tenant served the Landlord with this Application for Dispute Resolution on October 05, 2014.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a verbal tenancy agreement for a tenancy that was to begin on September 01, 2014.

On the basis of the undisputed evidence, I find that the Tenant was unable to move into the rental unit on September 01, 2014 as the Landlord refused to provide them with access to the rental unit. I therefore find, pursuant to section 44(1)(f) of the *Act*, that this tenancy agreement ended before it was scheduled to begin on September 01, 2014.

Section 38(1)(b) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Tenant did not serve the Landlord with a forwarding address, in writing, until the Tenant served the Landlord with this Application for Dispute Resolution on October 05, 2014.

I find that it would be an inconsistent application of the law to conclude that a Tenant has provided the Landlord with a forwarding address in writing if the Tenant only provided the address when the Landlord was served with the Application for Dispute Resolution. I find that the legislation contemplates that the forwarding address be provided, in writing, prior to the Tenant filing an Application for Dispute Resolution. I find it would be unfair to the Landlord to conclude differently, as the Landlord may conclude that it is too late to make a claim against the deposit because the matter is already scheduled to be adjudicated.

As the Tenant filed this Application for Dispute Resolution prior to providing a forwarding address to the Landlord, in writing, I find that this Application for Dispute Resolution was filed prematurely. I therefore dismiss the Tenant's application for the return of the security deposit, with leave to reapply.

Conclusion

The Tenant retains the right to file another Application for Dispute Resolution once the Tenant has provided the Landlord with a forwarding address, in writing, that is provided for the purpose of having the security deposit refunded, rather than for the purpose of initiating a Dispute Resolution Proceeding.

Once the Landlord receives a forwarding address for the Tenant, in writing, the Landlord is obligated to dispense with the security deposit in accordance with the *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 05, 2015

Residential Tenancy Branch

