



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for issues pertaining to the return of the security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and one of the landlords attended the conference call hearing. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the landlords obligated to return the security deposit to the tenant?

Background and Evidence

The landlord stated that the tenant was served a Two Month Notice to End Tenancy on November 23, 2014 because the property had been sold and all the conditions of sale had been satisfied and the purchaser had asked the landlords, in writing, to give the Notice because the purchaser or a close family member intended in good faith to occupy the rental unit. The Two Month Notice had an effective date of January 31,

2015. The landlord testified he believes the tenant's security deposit was transferred to the new owners as part of the sale.

The landlord stated that the tenant has since written to the landlords requesting the return of his security deposit and informing them that they must pay double because they did not return the security deposit within 15 days of receiving the tenant's forwarding address in writing. The landlord stated that the tenant should recover the security deposit from the new owners of the property. The landlord stated that he will provide the tenant with documentation from his Notary who dealt with the sale and transfer of funds to show that the security deposit was transferred to the new owners when the sale completed on January 31, 2015. The landlord stated that if he finds the security deposit was not passed to the new owners upon completion of the sale that the landlords will return it to the tenant.

The tenant stated that he did provide his forwarding address to the landlords and requested the return of his security deposit within 15 days. The tenant agreed that he has not yet provided a forwarding address to the new owners of the property and believes they have since sold the property.

Analysis

There appears to be some confusion as to who holds the tenant's security deposit in trust. The landlord will provide documentation to the tenant if the landlord finds the security deposit was passed to the new owners upon completion of the sale. The landlord agreed to return the tenant's security deposit if the landlord finds the security deposit was not transferred to the new owners.

I refer the parties to s. 38 of the *Act* which states that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do

either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Without evidence at this time as to who is responsible to return the security deposit to the tenant I am not prepared to make a finding in this matter. If the landlord can prove that the new owners now hold the tenant's security deposit the tenant is at liberty to provide the new owners with his forwarding address and request for them to return the security deposit within 15 days. If the new owners fail to return the security deposit within 15 days of receiving the tenant's forwarding address in writing, the tenant is at liberty to file a claim against the new owners to recover double the security deposit. If; however, the tenant finds these landlords still hold the security deposit the tenant is at liberty to file an application to recover double the security deposit.

As the landlords have insufficient evidence to show who holds the security deposit at this time I find the landlords' application has little merit and is dismissed. The landlords must bear the cost of filing their own application.

Conclusion

The landlords' application is dismissed without 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: June 17, 2015

Residential Tenancy Branch

