



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenants applied for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on November 25, 2014 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord. The Landlord stated that these documents were served on November 26, 2014.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- a security deposit of \$600.00 was paid;
- the Tenant did not authorize the Landlord to retain the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that the tenancy ended on October 31, 2014 and the Landlord stated that it ended on August 31, 2014 or September 30, 2014.

The Tenant stated that on November 02, 2014 or November 03, 2014 he went to the Landlord's place of employment and handed him a paper which contained a forwarding address for the Tenants. The Landlord stated that he did not receive the Tenants'

forwarding address until he was served with the Tenants' Application for Dispute Resolution.

The Landlord was not permitted to explain why he has not returned the security deposit, as the Landlord's right to retain the security deposit is not the subject of these proceedings.

Analysis

There is a general legal principle that places the burden of proving a fact on the person who is making a claim. In these circumstances, the burden of proving that the Tenants provided the Landlord with a forwarding address at the end of the tenancy, in writing, rests with the Tenant.

I find that the Tenants have submitted insufficient evidence to establish that the Tenants provided the Landlord with a forwarding address prior to serving the Landlord with the Application for Dispute Resolution. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that a forwarding address was given to the Landlord on November 02, 2014 or November 03, 2014 or that refutes the Landlord's testimony that he did not receive a forwarding address prior to being served with the Application for Dispute Resolution.

On the basis of the undisputed evidence, I find that the Landlord received a forwarding address for the Tenants when he was served with this Application for Dispute Resolution on November 25, 2014 or November 26, 2014.

Section 38(1)(b) of the *Residential Tenancy Act (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.

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

As there is insufficient evidence to conclude that the Tenants provided the Landlord with a forwarding address, in writing, prior to filing this Application for Dispute Resolution, I find that the Application for Dispute Resolution was filed prematurely. As the Application for Dispute Resolution was filed prematurely, I dismiss the Application for Dispute Resolution with leave to reapply.

Pursuant to section 62 of the *Act* I find that, for the purposes of section 38 of the *Act*, the Landlord has received the Tenants forwarding address when the Landlord receives this written decision. The parties are advised that the Landlord has fifteen days from the date of receiving this decision to comply with section 38 of the *Act*. In the event the Landlord does not comply with section 38 of the *Act* fifteen days after receiving the decision, the Tenants have the right to file another Application for Dispute Resolution seeking the return of the deposit.

Conclusion

The Application for Dispute Resolution 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: July 07, 2015

Residential Tenancy Branch

