



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

While both parties provided substantial testimony and evidence this decision records only the relevant facts pertaining to the tenant's claim.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on July 1, 2014 as a month to month tenancy for the monthly rent of \$750.00 due on the 15th of each month with a security deposit of \$350.00 and a pet damage deposit of \$350.00 paid. The tenant submitted the tenancy ended at the end of May 2015; the landlord stated it ended on May 15, 2015.

The tenant testified that the landlord had his mailing address on the tenancy agreement the parties had. He stated that when he moved out he spoken with one of the landlord's employees and stated that the landlord had his mailing address.

The landlord testified that he did not get the tenant's mailing address until he contacted the tenant by phone on or before October 8, 2015 when he was attempting to send the tenant his evidence.

I note the tenant's Application for Dispute Resolution, which was filed with the Residential Tenancy Branch on June 2, 2015, had the tenant's street address but not his mailing address.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, in writing, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Section 39 of the *Act* states that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit and the right of the tenant to return the deposit or pet damage deposit is extinguished.

While the tenant indicates that the landlord had the tenant's mailing address prior to the end of the tenancy and that he told one of the landlord's employees that the landlord had his mailing address, I find that this does not constitute the tenant providing the landlord with his forwarding address in writing.

If the tenant had provided the landlord with a written statement confirming that the mailing address he had on file for the tenant was to be considered his forwarding address or if the tenant had provided his mailing address in writing the tenant would have met the requirements under Section 38.

As such, I find the tenant had not, at the time of his Application for Dispute Resolution, provided the landlord with his forwarding address in writing. As a result, I find the tenant's Application for Dispute Resolution was premature.

However, as the landlord has confirmed that he now has the tenant's mailing address, I order that the date of this decision will be considered the date the landlord received the tenant's forwarding address.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution with leave to reapply should the landlord fail to comply with the requirements under Section 38(1).

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: November 04, 2015

Residential Tenancy Branch

