



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- compensation for the landlords' failure to return the security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant appeared. The individual landlord (the landlord) appeared on behalf of both landlords. The parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant elected to call one witness, JW.

The landlords admitted service of the tenant's dispute resolution package.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the Act? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 15 December 2014 and ended 31 January 2016. Monthly rent was \$1,325.00 and due on the first. The landlords continue to hold the tenant's security deposit in the amount of \$662.50.

The tenant testified that he provided his forwarding address to the landlords' agent W on or about 31 January 2016. The tenant testified that W provided him with a standard form sheet and that it included space for his phone number, forwarding address, and email address. The tenant testified that he did not retain a copy of this sheet.

The witness testified that on 31 January 2016 he was at the rental unit. The witness testified that W asked the tenant to complete a form. The witness testified that he observed the tenant writing something, but is not sure about the contents.

The landlord testified that the tenant provided notice to vacate the rental unit in or about the third week of January. The landlord testified that W provided a notice to vacate form to the tenant and that this form provides a space for the tenant's forwarding address; however, the tenant did not return this form. The landlord denied the existence of any form that the tenant suggested he filled out on 31 January 2016. The landlord denies that the tenant ever provided a forwarding address and says that had the tenant provided a forwarding address, the landlords would have filed a claim for losses against the tenant.

Analysis

Pursuant to subsection 38(1) of the Act, the obligation to return a security deposit is triggered by both the end of tenancy and provision of the forwarding address.

The tenant says that he provided his forwarding address to the landlords. The landlords say that the tenant did not provide a forwarding address. There is little corroborating evidence of either version of events.

On balance, I prefer the landlords' version of events. The witness was unable to corroborate the content of the form. The tenant did not provide a copy of the document. Further, the landlords have a claim against the tenant that they intend to file, but were unable to file because of the lack of an address for service, which is consistent with not possessing the address. The landlord denies the existence of the form that the tenant claims he filled out. For these reasons, I find that the tenant has not provided his forwarding address in writing to the landlord and, accordingly, that his claim for return of his security deposit is premature.

For these reasons, I dismiss the tenant's claim. The tenant may reapply, if necessary, after he has provided his forwarding address in writing to the landlords.

As the tenant has not been successful in this application, he is not entitled to recover his filing fee from the landlords.

Conclusion

The tenant's claim is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 09, 2016

Residential Tenancy Branch