



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNSD, FF

Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to:

- order the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- a monetary order for return of security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant and landlord attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

As the tenancy is ended and as a landlord's compliance may only be sought in relation to an ongoing tenancy I dismiss the tenant's claim for an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of security deposit?

Is the tenant authorized to recover the filing fee for this application?

Background and Evidence

As per the testimony of the parties, the tenancy began on December 15, 2004 on a month-to-month basis. Rent in the amount of \$2,000.00 was payable on the first of

each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the tenancy.

The parties mutually agreed to end the tenancy on April 20, 2016 as the landlord had sold the rental unit. The parties verbally agreed that in an effort to minimize any inconvenience or disruption to the tenant, rent for February, March and April would be waived. As agreed upon, the tenant did not pay rent for these months. The parties agreed the return of security deposit was not discussed at the time it was mutually agreed to end the tenancy.

The parties agreed that the tenant verbally provided his forwarding address but did not provide the landlord with his forwarding address in writing.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

In the absence of a landlord filing an application the tenant must prove a forwarding address in writing was provided to the landlord.

Although the tenant testified that he verbally provided a forwarding address, he acknowledged he has not provided it in writing. In the absence of a letter and specific date the forwarding address was sent, I find the tenant has not met the burden of separate written notice. Accordingly, I dismiss the tenant's application.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application for a monetary order for return of the security deposit is dismissed with leave to reapply.

The tenant's application to recover the filing fee for this 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: October 27, 2016

Residential Tenancy Branch

