



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 (the "Application") made by the Tenant on September 23, 2016 for the return of his security deposit and to recover his filing fee from the Landlord. An agent for the Landlord and the Tenant appeared for the hearing and provided affirmed testimony. The Landlord's agent confirmed receipt of the Tenant's Application.

Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The parties confirmed that this tenancy started on August 16, 2013 on a month to month basis and ended on August 31, 2016 through written notice by the Tenant. Rent in the amount of \$1,000.00 was payable by the Tenant on the first day of each month. The Tenant provided the Landlord with a security deposit in the amount of \$500.00 at the start of the tenancy, which the Landlord still retains. When the Tenant was asked whether he had provided the Landlord with a forwarding address in writing, the Tenant stated that prior to making his Application he had provided this verbally to the Landlord. The Tenant stated that the Landlord had then received this in writing on his Application.

Analysis

Section 38(1) of the Act states that, within 15 days **after** the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in **writing**, the landlord must repay the security deposit or make an Application to claim against it. On the basis of the undisputed evidence, I find the tenancy ended on August 31, 2016 when the Tenant vacated the rental unit. I also find that it was undisputed that

the Tenant did not serve the Landlord with a forwarding address **in writing** until the Tenant served the Landlord with his Application on September 28, 2016.

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

As the Tenant filed this Application prior to providing a forwarding address in writing, I find that the Tenant's Application was filed prematurely. I therefore dismiss the Tenant's Application for the return of the security deposit with leave to reapply. As the Landlord was present during the hearing, the Tenant confirmed his forwarding address as detailed on the Application, which I have reproduced on the front page of this Decision for convenience of the parties. As a result, I put the Landlord on notice that he has 15 days from the date of this hearing, until **November 25, 2016**, to either: return the Tenant's security deposit; get the Tenant's consent **in writing** to make a deduction or keep the security deposit; or make an Application to claim against it. The Landlord is cautioned that a doubling penalty may apply if the Landlord fails to deal properly with the Tenant's security deposit or has failed to complete the condition inspection reporting requirements of the Act and is seeking to make a claim for damage to the rental unit

Conclusion

The Tenant's Application is premature and is dismissed with leave to re-apply. The Landlord is obligated to deal with the Tenant's security deposit in accordance with the Act by November 25, 2016. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 10, 2016

Residential Tenancy Branch