



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Flamingo Motel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This is an application brought by the tenant requesting an order for return of his \$300.00 security deposit

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established the right to an order for the return of his security deposit.

Background and Evidence

The applicant testified that at the beginning of the tenancy, on December 6, 2015, he paid a security deposit of \$300.00.

The applicant further testified that as of today's date the landlord has failed to return the deposit, claiming that he damaged the bed the rental unit with a urine stain.

Both the landlord and the tenant agree that the tenant has never given the landlord a forwarding address in writing prior to applying for dispute resolution.

Analysis

The tenant has applied for an order for return of his \$300.00 security deposit; however the tenant did not give the landlord(s) a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Section 39 of the Residential Tenancy Act states:

- 39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
 - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Therefore at the time that the tenant(s) applied for dispute resolution, the landlord(s) were under no obligation to return the security deposit and therefore this application is premature.

At the hearing the tenant(s) stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord(s) are now considered to have received the forwarding address in writing as of today December 20, 2016.

Section 38 of the Residential Tenancy Act states:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Therefore, the landlord has 15 days from today's date to either return the deposit, or make an application for dispute resolution claiming against the deposit.

Conclusion

This application has been 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: December 20, 2016

Residential Tenancy Branch