



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 filed by the Tenants in which the Tenants applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on June 25, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via priority courier. The Agent for the Landlord acknowledged that these documents were received by the Landlord, although he does not know how they were received.

On December 07, 2016 the Landlord submitted 23 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that he does not know if these documents were served to the Tenants, although he believes they may have been mailed to the Tenants. The male Tenant acknowledged receiving this evidence in the mail and it was accepted as evidence for these proceedings.

On December 14, 2016 the Landlord submitted 3 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that he does not know if these documents were served to the Tenants. The male Tenant stated that these documents were not received. As the Tenants do not acknowledge receiving these documents and the Agent for the Landlord is unable to prove service of the documents, they were not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenants agree that:

- the tenancy began on December 10, 2013;
- a security deposit of \$1,650.00 was paid;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit, in writing;
- the Tenants did not provide the Tenant with a forwarding address, in writing, until the Application for Dispute Resolution was served;
- the Landlord returned \$792.77 of the security deposit on April 14, 2016; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The male Tenant stated that the tenancy ended on April 01, 2016. The Agent for the Landlord stated that it ended on April 01, 2016 or March 31, 2016.

Analysis:

Section 38(1)(b) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

I find that it would be inappropriate and unfair to conclude that a tenant has provided a landlord with a forwarding address in writing if the tenant only provided the address when the landlord is served with the Application for Dispute Resolution. I find that the legislation contemplates that the forwarding address be provided, in writing, prior to a tenant filing an Application for Dispute Resolution. I find it would be unfair to a landlord to conclude differently, as the landlord may be led to believe that it is too late for the landlord to make a claim against the deposit because the matter is already scheduled to be adjudicated.

As the Tenants did not provide the Landlord with a forwarding address prior to filing an Application for Dispute Resolution, I find that the Application was filed prematurely and I dismiss the Application, with leave to reapply. The Tenants retain the right to provide the Landlord with a forwarding address, in writing, in a manner than complies with section 88 of the *Act*.

The Tenants retain the right to file another Application for Dispute Resolution to recover the security deposit if the Landlord does not return the security deposit or claim against the deposits after being provided with the forwarding address.

At the hearing the parties were asked if they would mutually agree that for the purposes of section 38 of the *Act* the forwarding address can be deemed received, in writing, on

December 19, 2016. The Agent for the Landlord stated that he did not wish to reach that agreement, as the Landlord is out of town and may need additional time to consider a course of action. As the Agent for the Landlord did not agree that the forwarding address was received, in writing, on December 19, 2016, I find that the Tenants remain obligated to serve the Landlord with their forwarding address in a manner than complies with sections 39 and 88 of the *Act*.

Conclusion:

The Application for Dispute Resolution is 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 19, 2016

Residential Tenancy Branch