



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Whitworth Holdings Ltd., and Joanne Frohlick
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order for recovery of her security and pet deposit. The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

Whether the tenant is entitled to a monetary order for all or part of the security deposit; pursuant to Sections 38 and 67 of the *Residential Tenancy Act (Act)*.

Service

The tenant testified the landlord was served with notice of this hearing by hand approximately one hour before this hearing.

Background and Evidence

The tenant testified the tenancy began on May 17, 2011 with a monthly rent of \$ 925.00 due on the 1st of each month and that a security deposit of \$ 437.50 and pet deposit was paid on May 17, 2011. The tenancy ended on November 30, 2016.

The tenant testified that she provided the landlord with her forwarding address on December 4, 2016 by handing it to the then manager on that date. The tenant testified that she had not received any of her deposits back and had not permitted the landlord to retain any of the deposits.

The landlord testified that they had received the application less than an hour before the hearing and were caught by surprise. They further testified that they had not received the tenant's forwarding address until today as it was indicated on the application for dispute resolution. They also claimed that the tenant never paid a pet deposit.

Analysis

There are several problems with this application. First the applicant only served the respondent on the day of the hearing although the application was made on December 21, 2016. Section 59 (3) states:

59 (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution **must** give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Secondly the tenant's right to claim her security deposit is contingent upon the tenant giving the landlord her forwarding address in writing. Section 38 of the 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.

Here it is disputed as whether the tenant gave her forwarding address any earlier than the date of this hearing.

Accordingly I find that given that as the tenant had not served her application in the time prescribed by section 59(3) which has prejudiced the landlord, and may not have given the landlord her forwarding address until this January 17, 2016 I must dismiss her application with leave to reapply.

The parties were advised at the hearing that the 15 day delay prescribed by section 38 of the Act commences on January 17, 2017 and that the tenant's forwarding address is the address for the tenant in this application for dispute resolution. It is open to the tenant to prove at the next hearing whether she gave her forwarding address at an earlier date by providing any supporting evidence, however until then I find that for the operation of section 38 of the Act the latest it has been given is January 17, 2017. The landlord confirmed that they understood.

Conclusion

I have dismissed with leave to reapply all of the tenant's applications herein. I make no order as to the recovery of the filing fee.

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: January 18, 2017

Residential Tenancy Branch