



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Neither party submitted any documentation for this hearing.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on January 1, 2013 and ended on May 1, 2016. The tenants were obligated to pay \$800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$400.00 security deposit. The tenant testified that he provided his forwarding address to SB on May 7, 2016 by text message. The tenant is seeking the return of double his deposits $\$400.00 \times 2 = \800.00 . The tenant is also seeking the recovery of the \$100.00 filing fee for a total monetary award of \$900.00. The tenant testified that there is no written tenancy

agreement and that he misplaced his receipt to reflect the amount paid for the deposit. The tenant testified that he feels SB is the landlord for the property.

The respondent gave the following testimony. The respondent testified that he is the son of the owner of the property. The respondent testified that he and his three siblings occasionally helped his mother out with the rental but were not authorized agents for her. The respondent testified that his mother is the landlord. The respondent testified that he did not receive any of the rental payments or the security deposit from the tenant. The respondent testified that he doesn't even know what the amount of rent or deposit was.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*. The tenant testified that he lived in the basement of the home and that the owner lived upstairs. The tenant testified that the rent was paid to the owner who lived upstairs; SB's mother. The tenant testified that he chose not to serve her because her English is poor, she's elderly and wasn't sure where she was at the time of filing his application.

I find that the tenant has decided to serve the owners son as a matter of convenience. The tenant knew exactly where the owner lived yet chose not to file against her because of her limited English. In addition, he has failed to provide sufficient evidence that SB is the landlord. I find that the tenant has not served the appropriate person for this matter and in keeping with the laws of natural justice I must dismiss this application with leave to reapply.

Conclusion

The tenants' application 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: January 30, 2017

Residential Tenancy Branch