



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIWANIS MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mnsd, ff

Introduction

The tenant applies for the return of her security deposit, and also seeks recovery of her filing fee from the landlord.

Both parties attended the hearing. There are no issues as to service, and neither party provided any written evidence.

Issue(s) to be Decided

- Is the tenant entitled to recover her security deposit from the landlord?
- Do the doubling provisions apply in this case?
- Is the tenant entitled to recover the filing fee from landlord?

Background and Evidence

The tenancy began October 1, 2013, and ended on November 30, 2016. A security deposit of \$335.00 was paid at the start of the tenancy. The required condition inspections were done at move-in and move-out, and a written condition inspection report was prepared. At no time did the tenant authorize any deduction from the security deposit.

The tenant did not provide her new address in writing to the landlord at the end of the tenancy. The tenant provided her new address orally to the landlord, but without the postal code. The tenant currently resides with a boyfriend who also ended a tenancy, at a different address, with the landlord at the end of November. This person testified at the hearing that he had provided the landlord with a copy of his new lease, upon which was the information of his new rental premises. The tenant was a co-tenant with him on this lease, and therefore the landlord was provide with her new address as well.

The landlord testified that a copy of the new lease of the tenant was never provided to them. They attempted to mail the tenant's security deposit to the address they got from her (without a postal code), but it has been returned to them. I note that the landlord's now have the tenant's forwarding address, as it appears on the tenant's Application for Dispute Resolution.

Analysis

In most situations, section 38(1) of the Residential Tenancy Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, (which ever is later) to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

In this case, I find that the female tenant never provided the landlord with her forwarding address in writing (until she filed her claim). She provided it verbally only, and it was incomplete, missing the postal code. As to the testimony of her boyfriend that he gave the landlords a copy of his new lease, I prefer the testimony of the landlords and find that the lease was never provided to then as a forwarding address for the female tenant. Furthermore, I note that the tenant has not provided a copy of that new lease into evidence, and I am unable in any event to verify that her name appears on it, or that it bears a complete civic address.

The legislation is clear that it is the landlord has no obligation to return the deposit until 15 days after the forwarding address is provided, and therefore at the time of the filing of the tenant's claim, any obligation of the landlord to return the deposit had not yet been triggered. The tenant's claim to recover the balance of the deposit was filed prematurely, and therefore must be dismissed. It follows that the claim to recover the filing fee must also fail.

The landlord now has the tenant's current address, and there is no question that the tenant is entitled to the return of her deposit. I direct the landlord to immediately mail the deposit to the tenant (or if the tenant prefers, she can make arrangements to pick it up). Should the landlord fail to do so within 15 days of receipt of my decision, the tenant will be at liberty to file at new claim for double the deposit.

Conclusion

The tenant's claim is dismissed.

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: February 16, 2017

Residential Tenancy Branch