



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, O, FF

Introduction

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

- the return of the pet damage deposit or security deposit;
- an order that the landlords comply with the *Act*, regulation and/or the tenancy agreement;
- other unspecified relief; and
- to recover the filing fee for this application from the landlords.

The tenant appeared at the teleconference hearing and gave affirmed testimony. While the tenant appeared with a witness, the witness did not give any testimony. Both landlords appeared at the teleconference hearing and gave affirmed testimony. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary and Procedural Matters

The parties agreed that the address shown in the style of cause is the correct address for the rental unit and not the address for the unit set out on the tenant's application. Only the unit number has changed.

The tenant withdrew her application to recover the filing fee for this application from the landlords as the tenant's filing fee was waived.

The tenant withdrew her application for an order that the landlords comply with the *Act*, regulation and/or the tenancy agreement as the tenancy has ended.

The tenant clarified that the 'other' relief that the tenant was seeking was for moving costs to vacate the rental unit as well as compensation for the security deposit that was required for the tenant's new rental unit that she moved into.

Rule of Procedure 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the tenant's application I have determined that I will not deal with all the dispute issues the tenant has placed on her application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the return of the tenant's security deposit paid to the landlords named in this application. Therefore, I will not address the tenant's application relating to the other relief claimed. Accordingly, the 'other' relief sought by the tenant is dismissed with leave to re-apply.

Issue(s) to be Decided

- Is the tenant entitled to the return of the pet damage deposit or security deposit?

Background and Evidence

The undisputed testimony established that a tenancy started on September 15, 2016 and that the tenant moved out of the rental unit on January 15, 2017. Rent in the amount of \$800.00 was due on the first day of each month. The tenant provided the landlords with a damage deposit in the amount of \$400.00 on or about September 9th or 10th, 2016.

The tenant testified that her forwarding address was provided to the landlords when the tenant served the landlords with this application. The tenant testified that the address for service on her application is the tenant's forwarding address.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 38 of the *Act* establishes the provisions regarding the return of the tenant's security deposit and/or pet damage deposit. Subsection 38(1) of the *Act* reads as follows:

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.

Section 39 of the *Act* establishes that it is the tenant's obligation to provide a forwarding address for return of the deposits within a year of the end of the tenancy. If that does not occur, the landlord may keep the deposits and the tenant's right to the deposits is extinguished.

As the tenant acknowledged that she only provided the landlords with her forwarding address on her application, I find that there is insufficient evidence to satisfy me that the landlords were provided with the tenant's forwarding address in accordance with s.38 of the *Act*. A forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice. Therefore, I find that the landlords' obligation under the *Act* to return the tenant's security deposit has not started.

Pursuant to section 71(2)(b) of the *Act*, I find that the landlords are now deemed served with the tenant's forwarding address as of February 20, 2017, the date of the hearing. In making this finding I have taken into consideration the fact that the tenant confirmed her forwarding address for service on the application is the tenant's correct and current forwarding address. Accordingly, the landlords' obligation under s.38 of the *Act* has now started as of the date of the hearing. The landlords will then have 15 days from the date of the hearing to apply for dispute resolution or return the tenant's security deposit. If the landlords have questions about the return of the security deposit, or filing an application, they may consult our website or talk to an information officer at the branch for more information.

Conclusion

For the reasons stated above, the tenant's application is dismissed with leave to re-apply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 22, 2017

Residential Tenancy Branch