



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, OLC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit, for an Order requiring the Landlord to comply with the tenancy agreement or the *Residential Tenancy Act (Act)*, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing, were sent to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receiving these documents in the mail, although he cannot recall when they were received. On the basis of the undisputed evidence I find that these documents were served to the Landlord in accordance with section 89 of the *Act*.

The Tenant stated that he did not submit documentary evidence to the Residential Tenancy Branch prior to the hearing, as he believed it could be submitted during the teleconference.

On March 06, 2017 the Landlord submitted 6 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were not served to the Tenant and they were, therefore, not accepted as evidence for these proceedings.

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

Preliminary Matter

With the consent of both parties the Application for Dispute Resolution was amended to reflect the spelling of the Landlord's name, as provided by the Landlord at the hearing.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord stated that he thought the tenancy began in 2012. The Tenant stated that it began in 2012 or 2013.

The Landlord and the Tenant agree that:

- a security deposit of 1,150.00 was paid, although neither party can recall when the deposit was paid;
- the Landlord did not schedule a time for an inspection at the beginning or the end of the tenancy;
- the parties discussed the return of the security deposit but could not reach an agreement about how much could be retained;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that he thought the tenancy ended shortly before July 01, 2014. The Tenant stated that the tenancy ended on July 01, 2014.

The Tenant stated that on August 14, 2015 he gave the Landlord a letter in which he provided a forwarding address. He stated that he cannot recall if he mailed this letter to the Landlord or placed it through his mail slot. The Tenant confirmed that the address was provided more than a year after the tenancy ended.

The Landlord stated that he does not recall receiving a forwarding address for the Tenant, in writing, until he was served with the Tenant's Application for Dispute Resolution.

Analysis:

Section 38(1) of the *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 file an Application for Dispute Resolution claiming against the deposits.

I find that the Tenant has provided insufficient evidence to show that the Tenant provided the Landlord with his forwarding address, in writing, on August 14, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that he provided his address, in writing, on August 14, 2015 and by the Landlord's testimony that he does not recall receiving a forwarding address for the Tenant until he received the Application for Dispute Resolution.

Section 39 of the *Act* stipulates that despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit or the pet damage deposit, or

both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Even if I accepted the Tenant's testimony that this tenancy ended on July 01, 2014 and that he provided a forwarding address on August 14, 2015, I would conclude that he did not provide a forwarding address in writing within one year after the end of the tenancy. I therefore find that the Tenant has extinguished his right to the return of his security deposit, pursuant to section 39 of the *Act*, and I dismiss his application to recover the deposit.

I find that the Tenant has failed to establish the merit of his Application for Dispute Resolution and I dismiss his application to recover the fee for filing this Application.

Conclusion:

The Application for Dispute Resolution is dismissed, without 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: March 14, 2017

Residential Tenancy Branch