



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD; FF

Introduction

This is the Tenants' Application for Dispute Resolution seeking return of the security deposit and recovery of the cost of the filing fee.

Both parties signed into the teleconference and gave affirmed testimony.

The Landlord acknowledged receipt of the Notice of Hearing documents on or about August 31, 2016.

The Tenants did not provide any documentary evidence in support of their claim.

The Landlord provided 58 pages of documents and 252 photographs in evidence. She testified that she served the Tenant CE with copies of her documents, by handing the documents to CE, on February 21, 2017. The Landlord provided a Certificate of Service in evidence, signed by a witness.

The Landlord's documents appear to support a claim that the Landlord believes she has against the Tenants for damages. I explained to the Landlord that we are only dealing with the Tenants' Application today and that she is at liberty to make her own Application.

The Landlord gave a new address for service during the Hearing.

Issue(s) to be Decided

Are the Tenants entitled to return of the security deposit and compensation pursuant to the provisions of Section 38 of the Act?

Background and Evidence

A large amount of submissions were given during the Hearing; however, I have recorded only the relevant parts of the parties' testimony in this Decision.

This tenancy ended on or about August 31, 2016. The Tenant CE stated that he provided the Landlord with his forwarding address, via text message, at some point after the tenancy ended.

The Landlord denied receiving the Tenants' forwarding address and stated that she only knew their new address after being served with the Tenants' Application for Dispute Resolution.

Analysis

Section 38 deals with how the security deposit is to be administered at the end of a tenancy. Section 38 provides:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) [service of documents],

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

[reproduced as written]

A tenant is required to provide a forwarding address in writing, after which date the landlord has 15 days to return the security deposit or make application against it. The Landlord disputed receipt of the Tenants' forwarding address and I find that the Tenants did not provide sufficient documentary evidence that the Landlord received their forwarding address (for example, a copy of the text message and any return text from the Landlord acknowledging receipt).

I find that the Tenants' Application was filed pre-maturely because at the time of making their Application, there is insufficient evidence that a forwarding address had been provided to the Landlord.

Pursuant to the provisions of Section 62(2) of the Act, I find that the Landlord was provided with the Tenants' forwarding address during the Hearing on March 1, 2017, and that the Landlord has until March 16, 2017, to either return the security deposit to the Tenants or to make an Application against the security deposit.

Both parties were encouraged to refer to Section 38 of the Act and to Part 3 of the Residential Tenancy Regulation.

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: March 01, 2017

Residential Tenancy Branch