



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 an application by the tenant for the return of double the security deposit and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord was represented by his agent.

Issue to be Decided

Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began in February 2015 and ended on August 01, 2015. Prior to moving in, the tenant had paid a deposit of \$300.00.

The tenant stated that she provided the landlord with a forwarding address verbally on August 21, 2016. The tenant testified that on that day, she had visited the landlord's home to return the keys and notified the landlord's son, who represented the landlord during the hearing, of her forwarding address. The tenant agreed that she did not provide her forwarding address in writing.

The landlord stated that he did not receive the tenant's forwarding address at all. He also stated that he made attempts to call her but the number that he had for her did not work. The landlord stated that the tenant had left the unit in a dirty condition and had left articles of furniture behind which he had to dispose of.

The tenant denied having left behind unwanted possessions and stated that she had cleaned the unit prior to moving out. The tenant also complained that the landlord put her furniture outside before the end of tenancy.

The tenant stated that she did not receive the security deposit by September 30, 2016 at which time she made this application.

The landlord agreed that he received the tenant's address when he received the notice of this hearing.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

I now have to determine whether the landlord received the tenant's forwarding address in writing, prior to receiving the notice of hearing package. Based on the testimony of both parties I find that the tenant may have given the landlord her forwarding address verbally but by her own admission she did not provide a forwarding address in writing.

However the landlord did receive the notice of hearing package in October 2016 and would have had the tenant's forwarding address at that time.

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 and should not be deemed as providing the landlord with the forwarding address. Additionally landlords who receive the forwarding address in the application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the deposit.

Since I have determined that the tenant had not provided the landlord with a forwarding address, prior to serving the landlord with the notice of hearing package, I find that the landlord had no way of returning the deposit by mail or making application for damages against it. The landlord is not bound by the 15 day time frame after receipt of the forwarding address contained in the notice of hearing.

Therefore I find that the tenant's application was premature, because she had not carried out all of the steps she was supposed to before applying for dispute resolution, which includes providing the landlord with a forwarding address in writing.

Accordingly the tenant is not entitled to the return of double the deposit. The tenant is entitled to the return of the base amount of the deposit. Since the tenant has not proven her case she must bear the cost of filing her application.

In regards to the landlord's claims relating to loss that he may have suffered, I am not able to neither hear nor consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. Attempts to mediate a settlement between the two parties were unsuccessful as the tenant was clear that she wanted the return of the entire deposit. The landlord is at liberty to make a separate application for dispute resolution for any losses he may have incurred.

Conclusion

The tenant's application for the return of double the deposit is dismissed.

The landlord must return the base sum of the deposit (\$300.00) to the tenant or make application to retain all or a part of the deposit.

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 29, 2017

Residential Tenancy Branch