



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 as a result of the Tenant's Application for Dispute Resolution, dated September 30, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order compelling the Landlord to return all or part of the security deposit or pet damage deposit;
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf, as did the Landlord. Both parties provided a solemn affirmation.

The Tenant testified that his Application package, which included the Notice of a Dispute Resolution Hearing, was served on the Landlord by registered mail on October 5, 2016. The Landlord confirmed receipt. I find the Landlord was duly served with the Tenant's Application package.

The Landlord submitted documentary evidence in response to the Tenant's Application. He testified it was served on the Tenant by leaving a copy with the Tenant's father at the address provided on the Application. The Tenant testified he received the Landlord's documentary evidence on or about March 28, 2017, and acknowledged he had time to review it. I find the Tenant was duly served with the Landlord's documentary evidence on March 28, 2017.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Neither party raised any issue with respect to service or receipt of the above documents. I have reviewed all oral and

written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on June 1, 2016, and ended when the Tenant vacated the rental unit on or about August 31, 2016. Rent in the amount of \$2,100.00 per month was due on the first day of each month. Although the parties agreed a security deposit was paid to the Landlord, they disagreed on the amount. The Landlord testified the Tenant's paid \$750.00 as a security deposit and provided a bank statement in support. The Tenant submitted he and his roommate paid \$1,500.00 as a security deposit but did not provide documentary evidence in support.

The Tenant applied for an order that the Landlord pay him double the amount of the security deposit, or \$3,000.00. He testified he provided the Landlord with his forwarding address in writing on September 15, 2016, but did not provide a copy of that document in support. The Landlord denied receiving the Tenant's forwarding address until he received the Tenant's Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. It is receipt of the Tenant's forwarding address in writing that triggers the Landlord's obligation to deal with the security deposit in accordance with section 38 of the *Act*.

Further, section 38(6) confirms that, if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit or pet damage deposit, and must pay the tenant double the amount of the security deposit or pet damage deposit, or both.

In this case, I find there is insufficient evidence before me that the Tenant provided his forwarding address to the Landlord in writing in accordance with the *Act*. Accordingly, I find that the Tenant's Application must be dismissed, with leave to reapply if the Landlord does not deal with the security deposit in accordance with section 38 of the *Act*, as described below.

The Landlord was advised during the hearing that, pursuant to section 71(2)(b) of the *Act*, he has received the Tenant's forwarding address in writing on the date of this Decision. The Landlord must now deal with the security deposit in accordance with section 38 of the *Act*. That is, within 15 days after the date of this Decision, the Landlord must either return the security deposit to the Tenant at the address provided on the Tenant's Application, or make a claim against the security deposit by filing an application for dispute resolution at the Residential Tenancy Branch. Failure to do so may result in the Landlord being prevented from making a claim against the security deposit, and the Tenant being awarded double the amount of the security deposit at a future hearing.

Conclusion

The Tenant's Application is dismissed, with leave to reapply if the Landlord does not deal with the security deposit in accordance with section 38 of the *Act*, as described above.

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: April 4, 2017

Residential Tenancy Branch