



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit.

The parties attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. 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.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on March 01, 2015. Rent for this unit was \$600.00 per month due on the 6th day of each month. The tenant paid a security deposit of \$300.00 on February 25, 2015. The tenancy ended on September 15, 2016.

The tenant testified that he provided the landlord with his forwarding address in writing on September 25, 2016 in person. The landlord said when his son comes home he will post the tenant a cheque for his security deposit. The tenant testified he did not take a copy of the letter as he took the landlord at his word. When the landlord did not return his security deposit then the tenant filed his application.

The tenant testified that he did not give the landlord permission to keep his security deposit and as it has not been returned within 15 days of September 25, 2016 the tenant seeks to recover double the security deposit

The landlord testified that he did not receive the tenant's forwarding address and only found out his address when he received the tenant's application for Dispute Resolution. The tenant vacated on September 15 and took his stuff but never left a forwarding address. The landlord testified that they have filed an application for Dispute Resolution to keep the security deposit and that is due to be heard on April 25, 2017.

At the hearing the tenant confirmed his new forwarding address and the landlord took note of this. The landlord testified that he will now have to send his hearing package again to the tenant at this new address as it was returned from the tenant's old address listed on this application.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find I have insufficient evidence from the tenant to meet the burden of proof that the tenant gave the landlord his forwarding address in writing. The tenant has included an address on the application; however, this is deemed to be an address for service and not necessarily a forwarding address. And this address has since changed. A new Address has been provided to the landlord at this hearing.

In any event the landlord has filed an application or an Order permitting the landlord to keep the security deposit. That hearing will be held on April 25, 2017. Consequently, I must deny the tenant's application to recover double the security deposit at this time. And the matter can be dealt with at the landlord's hearing on September 25, 2017.

If for any reason that hearing does not take place the landlord is deemed to have received the tenant's forwarding address at this hearing on April 04, 2017 and the tenant then has leave to reapply.

Conclusion

Based on the above, the tenant's 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: April 05, 2017

Residential Tenancy Branch