



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction:

Only the landlord/respondent attended the hearing and gave sworn testimony. He said they were served with the tenant's Application for Dispute Resolution by registered mail but never received the tenant's forwarding address in writing. I find the Application was legally served pursuant to 89 of the Act for the purposes of this hearing but the tenant never served her forwarding address in writing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence:

Only the landlord/respondent attended the hearing. After waiting 10 minutes and the applicant/tenant not attending, the landlord was given opportunity to be heard, to present evidence and make submissions. The landlord said the tenancy in question began on March 1, 2017 although the tenant had lived in the home previously with other room mates. The rent was \$2520 a month and a security deposit of \$1260 was paid. The tenant was having problems so she asked the landlord if she could assign the tenancy agreement to a room mate who was in residence. The landlord agreed and said she should settle the matter of her security deposit with the room mate to whom she was assigning the agreement. She vacated and provided no forwarding address in writing. The landlord said the room mate assignee never paid rent and they eventually had to evict him; this cost them over \$12,000. They have not made an Application to claim against the tenant/applicant.

In evidence is a Notice to End her tenancy dated June 7, 2017 to end the tenancy on May 31, 2017. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find insufficient evidence that the tenant vacated the premises on May 31, 2017 as the landlord gave sworn testimony that she left a room mate in place after asking the landlord if she could assign her agreement. I find insufficient evidence that a new tenancy was ever created or that the tenant/applicant ever gave her forwarding address in writing to the landlord. Furthermore, the tenant/applicant did not attend the hearing to support her application.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply. Accordingly, in the absence of sufficient evidence or submissions I order the application dismissed without leave to reapply.

Conclusion:

I dismiss the application of the tenant in its entirety 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: December 04, 2017

Residential Tenancy Branch