



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VICTORIA ROYAL VACATIONS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a tenant's application for return of the security deposit. The landlord did not appear at the hearing. The tenant testified that she sent the hearing package to the landlord via registered mail on August 29, 2015 and it was successfully delivered on September 5, 2017. The tenant orally provided a registered mail tracking number as proof of service. I accepted that the landlord was duly served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit?

Background and Evidence

The fixed term tenancy commenced on September 6, 2016 and was set to expire on July 5, 2017. The tenant paid a security deposit of \$870.00 and was required to pay monthly rent of \$1,740.00 plus \$105.00 for monthly cleaning.

The landlord and the tenant's parents participated in a move-in inspection together and the tenant received a copy of the move-in inspection report.

The tenant returned possession of the rental unit to the landlord on July 3, 2017 and participated in a move-out inspection with the landlord, in the presence of the tenant's uncle. The landlord prepared a move-out inspection report although the tenant did not receive a copy of it.

The tenant testified that she did not authorize the landlord to retain any portion of the security deposit in writing and the landlord indicated she would return the security deposit to the tenant.

After the tenancy ended the tenant did not receive a refund and sent text messages to the landlord to enquire about the security deposit. The landlord responded by stating she had to obtain receipts and needed more time to determine the amount of the security deposit to return. The landlord told the tenant she would refund the security deposit to the tenant's credit card. The tenant testified that she checked her credit card statements and no refund was received, leading to the tenant to file this Application for Dispute Resolution.

The tenant could not recall with any certainty whether she provided the landlord with a forwarding address in writing prior to filing this Application for Dispute Resolution. The tenant confirmed that the address appearing on her Application for Dispute Resolution is her current mailing address.

Analysis

As provided in section 38 of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

The tenant bears the burden to prove when and how a forwarding address was given to the landlord since a landlord is not required to take action with respect to returning or claiming against the security deposit until a forwarding address is received. In this case, the tenant did not meet her burden to prove she provided the landlord with a forwarding address in writing prior to filing this Application for Dispute Resolution. Accordingly, I find the tenant's Application for Dispute Resolution was pre-mature and I dismiss it with leave.

Considering the landlord received the tenant's Application for Dispute Resolution, which contained a service address for the tenant in writing, by way of receipt of this decision the landlord is put on notice that the landlord is now considered to be in receipt of the

tenant's forwarding address. For added certainty, I have also recorded the tenant's service address on the cover page of this decision. Accordingly, **upon receipt of this decision, the landlord has 15 days to refund the security deposit to the tenant; obtain the tenant's written consent to retain all or a portion of the security deposit; or, file an Application for Dispute Resolution to claim against the security deposit.** Failure to do one of these three things within 15 days will give the tenant cause to file another Application for Dispute Resolution and seek return of double the security deposit.

Conclusion

The tenant's application is pre-mature and dismissed with leave to reapply.

Upon receipt of this decision the landlord is considered to be in receipt of the tenant's forwarding address and has 15 days to take action with respect to administering the security deposit in accordance with section 38 of the Act.

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: February 28, 2018

Residential Tenancy Branch