



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence.

At the beginning of the hearing the landlord confirmed that his first and last names were reversed on the tenant's application. As neither party had an issue with the correction, the landlord's name was amended to reflect the correct order of his name.

Background and Evidence

This tenancy began on January 1, 2016, and ended on March 31, 2017. Monthly rent was set at \$2,300.00. The landlord had collected a security deposit in the amount of \$1,150.00 at the beginning of the tenancy, and has not returned any portion of the deposit to the tenant.

The tenant testified that he had provided the landlord with his forwarding address by mail in December of 2017, but the landlord disputes having received this letter. The tenant testified that he did not give permission for the landlord to retain any portion of his deposit.

Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

As the tenant was unable to provide sufficient evidence to support that the landlord was provided with his forwarding address in writing, and as both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing. I informed the landlord that he had 15 days from the date of the hearing, until April 27, 2018, to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply. The remaining portion of the tenant's application is dismissed with leave to reapply.

The tenant's forwarding address was confirmed during the hearing, and the landlord was informed that he had 15 days from the date of the hearing, until April 27, 2018 to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

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 13, 2018

Residential Tenancy Branch