



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of a security deposit and for the recovery of the filing fee paid for this application.

The Landlord attended the hearing along with a friend who attended as support (the “Landlord”). The Tenant was also present for the duration of the hearing. All parties were affirmed to be truthful in their testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding and Application package from the Tenant. The Tenant confirmed that he received a copy of the Landlord’s evidence. The Tenant did not submit any evidentiary material prior to the hearing.

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 to be Decided

Is the Tenant entitled to a Monetary Order for the return of their security deposit?

Background and Evidence

Both parties agreed as to the terms of the tenancy. The tenancy began on June 1, 2016 and the Tenant moved out on January 31, 2018. Rent in the amount of \$3,100.00 was

due on the first day of each month. A security deposit in the amount of \$1,550.00 was paid at the outset of the tenancy and no pet damage deposit was paid. The Landlord is still in possession of the full security deposit amount.

The Tenant testified that when he moved into the upstairs unit, he was told that the basement unit would not be rented out and instead that the landlords would use it for one or two weeks per year. The Tenant testified that the tenant who moved into the basement rental unit smoked on the property. The Tenant said that he could no longer stay living there with his family and provided notice to the Landlord in mid-January to end the tenancy on January 31, 2018.

The Tenant testified that a move-in condition inspection report was completed with an agent for the Landlord, but that no move-out condition inspection report was completed. The Tenant stated that he did not agree to the Landlord withholding any amount of the security deposit.

When asked about whether his forwarding address was provided to the Landlord, the Tenant said that it was not provided and he was not aware of the need to do this. Later in the hearing, the Tenant said that he provided his forwarding address to the Landlord by text message in mid-January at the same time he provided notice that he was moving out.

The Landlord testified that she did not receive any complaints from the Tenant regarding the tenant in the basement rental unit. She was not aware that the Tenant was moving out until the tenant in the basement rental unit advised her of this. She called the Tenant the day before he moved out and it was confirmed to her then that he was leaving. The Landlord testified that she did not receive notice from the Tenant in mid-January regarding ending the tenancy.

The Landlord testified that she lost rental income due to not being aware that the Tenant was moving out. She had received notice through text message in October 2017 that the Tenant would be moving out on November 1, 2017. She then received another text message in October 2017 cancelling the notice and informing her that the Tenant would be staying in the rental unit. The text messages were submitted in evidence.

The Landlord testified that she did not receive a forwarding address from the Tenant. Later in the hearing she testified that on February 3, 2018 or February 4, 2018, she received a text from the Tenant telling her to return the security deposit to his place of work. When asked again about the forwarding address, she testified that she did not

remember exactly what the text message said and whether the full forwarding address was provided at this time or not.

The Landlord testified that a move-out condition inspection report was not completed due to not knowing that the Tenant was moving out.

Analysis

Through the Landlord's testimony and evidence, it became clear that she was seeking to retain the security deposit as compensation for damages and/or loss. Both parties were informed that this hearing and resulting decision would only reference the claims stated on the Tenant's application for the return of the security deposit and any additional claims by either party would have to be claimed through a separate application for Dispute Resolution. Both parties have a right to know the claims against them and to submit evidence regarding the claims listed on an application for Dispute Resolution.

In accordance with Section 38(1) of the *Act*, a Landlord has 15 days to return or claim against a security deposit from the later of the date the tenancy ends or the date the tenant's forwarding address is provided. As such, I find the matter of the forwarding address essential to this dispute. Both parties agreed that the tenancy ended on January 31, 2018. However, during the hearing, the parties did not agree on whether a forwarding address was provided by the Tenant.

Along with the conflicting testimony provided by both parties during the hearing, I find that there was no evidentiary material submitted by either party regarding the forwarding address.

During the hearing, the Tenant provided his full forwarding address to the Landlord and the Landlord repeated it back to ensure it was correct. Pursuant to Section 71(2)(b) of the *Act*, I determine that the Landlord has been duly served with the Tenant's forwarding address as of the date of this hearing, June 4, 2018.

The Landlord now has 15 days from the date of this hearing to return the security deposit in full or apply for dispute resolution against the security deposit in accordance with the *Act*. Should the Landlord not do either of these within the 15 days allowable under the *Act*, the Tenant may reapply for the return of the security deposit.

As the forwarding address was only determined to have been provided as of June 4, 2018, I find that the Tenant's application for the return of the security deposit was filed prematurely. As such, I dismiss the Tenant's application with leave to reapply.

As the Tenant's application was dismissed, I do not grant the recovery of the filing fee paid for this application.

Conclusion

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: June 14, 2018

Residential Tenancy Branch