



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 16, 2017 (the "Application"). The Tenants applied for an order granting return of all or part of the security deposit or pet damage deposit, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenants and the Landlord attended the hearing at the appointed date and time. The parties provided affirmed testimony.

On behalf of the Tenants, M.M. testified the Application package and documentary evidence was served on the Landlord by leaving a copy at the door of the Landlord's residence. The Landlord acknowledged receipt. Although unable to recall when it was received, the Landlord confirmed she received it quite some time ago.

The Landlord submitted documentary evidence in response to the Application. She testified it was served on the Tenants in person. On behalf of the Tenants, M.M. acknowledged receipt on June 20, 2018.

No further issues were raised with respect to service and receipt of the above documents. Pursuant to section 71 of the *Act*, I find the Tenants' Application package and the Landlord's documentary evidence were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Are the Tenants entitled to an order granting return of all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties agreed the tenancy began on July 1, 2016. The Tenants gave written notice of their intention to vacate in an email dated October 4, 2017, and vacated the rental unit on October 31, 2017. During the tenancy, rent in the amount of \$1,200.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00, which the Landlord holds.

Initially, M.M. testified the Tenants provided the Landlord with their forwarding address in writing with the Application package. M.M. then stated it was provided to the Landlord before the end of the tenancy but could not recall the date. In support, the Tenants submitted a type-written, unsigned, and undated note that set out their current address. During the hearing, M.M. confirmed the address provided on the Application is her current address.

In reply, the Landlord acknowledged receipt of the Tenants' forwarding address with the Application package, not during the tenancy as claimed.

Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I find there is insufficient evidence before me to conclude the Tenants provided the Landlord with a forwarding address in writing before making the Application.

Accordingly, I order that:

- the Landlord is deemed to have received the Tenants' forwarding address during the telephone conference hearing on June 28, 2018;
- the Landlord has 15 days after the date of the telephone conference hearing to deal with the security deposit in accordance with section 38 of the *Act*; and
- the Tenants' Application is dismissed with leave to reapply.

Conclusion

The Tenants' Application is dismissed, with leave to reapply, as outlined above.

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 28, 2018

Residential Tenancy Branch