



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision pertains to the Tenant's application for dispute resolution made on May 17, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks a monetary order for a return of their security deposit, and for recovery of the filing fee.

The Tenant and the Landlord attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Is the Tenant entitled to a monetary order for a return of their security deposit?
2. Is the Tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Tenant testified that they, along with a co-tenant (not a party to this application) began a one-year fixed term tenancy with the Landlord on January 1, 2017, which converted to a month-to-month tenancy on January 1, 2018. The Tenant and co-tenant ended the tenancy on April 30, 2018, and moved out May 2, 2018. Monthly rent was \$2,500.00 and there was a security deposit of \$1,250.00. The Tenant paid \$600.00 toward the security deposit. The parties submitted into evidence a copy of the tenancy agreement.

In February 2017, the Tenant's bathtub overflowed, causing a significant amount of

water to leak into a rental unit one floor below and into the co-tenant's bedroom closet. A restoration company was called in and did extensive repairs.

On or about April 28, 2018, (the parties differed on the exact date), the Landlord had a "farewell lunch" with the Tenant, during which the Landlord told the Tenant that they were keeping their security deposit in partial satisfaction of the repair costs. The Landlord testified that the Tenant said "O.K.", but acknowledged that there was no written agreement between the two regarding the security deposit.

The Tenant testified that they mailed their forwarding address to the Landlord on May 10, or on May 12, or as possibly as late as May 20, 2018. The Landlord testified they received the mail containing the forwarding address, along with registered mail containing the Notice of Dispute Resolution Proceeding package on June 15, though Canada Post document tracking indicates a pick-up date of June 17.

Analysis

Section 38 (1) of the Act, "Return of security deposit and pet damage deposit" states:

38 (1) Except as provided in subsection (3) of (4) (a), within 15 days after the later of

- (a) the date the tenancy ends,
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Tenant testified that they were uncertain of when they mailed their forwarding address. It was sometime between May 10 and May 20, 2018. The Tenant did not provide any documentary evidence regarding when the forwarding address was mailed. Given the uncertainty of the Tenant as to when they mailed their forwarding address, and the lack of documentary evidence in this regard, I make no finding of fact as to when the tenant mailed the forwarding address. Further, I find it rather incongruous that the Tenant filed for dispute resolution on May 17, 2018, mere days after (or before) they mailed their forwarding address.

The Landlord testified receiving the Tenant's forwarding address on June 15, 2018 or on June 17, 2018. Based on the documentary evidence submitted by the Landlord, I

find as a fact that the Landlord received the forwarding address on June 17, 2018.

Pursuant to section 38 (1) of the Act, I find the Landlord had 15 days—until July 2, 2018—to either repay the security deposit or apply for dispute resolution. The Tenant applied for dispute resolution on May 17 and the dispute resolution hearing occurred on June 29, 2018, *before* the 15 days had elapsed. As such, I find that the Tenant has applied for dispute resolution prematurely, and that there is insufficient evidence before me to establish that the Tenant has met the onus of proving that the Landlord either repaid the security deposit or applied for dispute resolution.

Conclusion

Based on the above, I dismiss the Tenant's application for a monetary order for a return of their security deposit, with leave to reapply.

I dismiss the Tenant's application for a monetary order for recovery of the filing fee, 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 Act.

Dated: July 4, 2018

Residential Tenancy Branch