



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT MNSD

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 dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Background and Evidence

This tenancy began in August of 2012, and ended on June 30, 2017. Monthly rent was set at \$900.00. The landlord had collected a security deposit in the amount of \$450.00 at the beginning of the tenancy, and is still in possession of the entire security deposit.

The tenant testified that she had provided the landlord with her forwarding address by way of Registered Mail, but the mail was refused by the landlord. The landlord testified in the hearing that he had never received the package, or notification that he was sent a package.

The tenant provided a tracking number for the mailing, but as the package was sent over a year ago, the tracking details are no longer available.

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 tracking information provided by the tenant could not be verified due to the length of time that has passed, and as the landlord disputes the receipt of the forwarding address, the tenant's application is dismissed with leave to reapply.

As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I indicated to both parties that the date of the hearing, December 28, 2018 serves as the date that the landlord was served with the tenant's forwarding address, and that that the deposit must be dealt with in accordance with section 38 of the *Act*.

The landlord must return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or file an Application to retain a portion or all of it.

Conclusion

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, December 28, 2018 to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or file 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: January 2, 2019

Residential Tenancy Branch