



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on September 9, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant M.Z. attended the hearing and was accompanied by A.Q. and J.F., who assisted with translation. The Landlord attended the hearing on his own behalf. All in attendance provided a solemn affirmation.

On behalf of the Tenants, M.Z. testified the Application package was served on the Landlord, but was unable to provide details of service. The Landlord confirmed receipt of the Application package 4 days before the hearing and submitted he was unable to provide documentary evidence of damage in time for the hearing.

In addition, the Tenant submitted additional documentary evidence in support of the claim. It was submitted through the Service Portal on or about January 7, 2019, 4 days before the hearing. However, M.Z. was unable to explain why the evidence was served contrary to the Rules of Procedure, and the Landlord denied receipt. Therefore, this evidence has not been considered further in the Application.

As the issues for consideration in the Application were narrow, I elected to proceed with the Application despite the deficiencies in service of documents. The parties were given an opportunity to respond to questions posed by giving 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the fixed-term tenancy began on August 15, 2017, and ended on August 15, 2018. During the tenancy, rent in the amount of \$1,900.00 per month was due on the 15th day of each month. The Tenants paid a security deposit in the amount of \$950.00, which the Landlord holds.

On behalf of the Tenants, M.Z. testified they provided the Landlord with a forwarding address in writing. However, M.Z. was unable to direct me to a copy of the email in the Tenants' evidence. Further, the Landlord denied receipt of the Tenants' forwarding address in writing.

The Tenant M.Z. confirmed during the hearing that the address provided on the Application is the Tenants' current residence.

Analysis

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

Section 38(1) of the *Act* requires a landlord to repay deposits or make 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.

In this case, I find there is insufficient evidence before me to conclude the Tenants provided the Landlord with their forwarding address in writing. However, the Tenant M.Z. confirmed during the hearing that the address provided with the Application is correct and is the Tenants' current residence.

I ORDER THAT:

- the Landlord is deemed to have been served with and received the Tenants' forwarding address in writing on January 11, 2019;
- the Landlord has 15 days – until January 26, 2019 – 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.

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 11, 2019

Residential Tenancy Branch