



Dispute Resolution Services

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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 the return of the security deposit, and the recovery of the filing fee paid for this application.

The Tenant and a family member (the “Tenant”) attended the hearing, as did the Landlord and a family member (the “Landlord”). The parties were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package but stated that they did not receive a copy of the Tenant’s evidence.

The Tenant stated that their evidence was given to the Landlord in person at the same time as the Notice of Hearing documents. The Tenant submitted a receipt for the security deposit as well as a copy of a letter with their forwarding address. However, as the letter was submitted to the Residential Tenancy Branch on the day of the hearing, I find that it was not provided within the 14-day timeframe required as stated by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*. This rule also requires that the evidence of the applicant is served to the respondent within the same timeframe.

As the Landlord stated that the Tenant’s evidence was not received and without evidence that would confirm the package was served, the Tenant’s evidence is not accepted and will therefore not be included in this decision. The Landlord did not submit any documentary evidence prior to the hearing.

Issues to be Decided

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in September 2013 and ended on August 31, 2018. Monthly rent was \$1,300.00 and a security deposit of \$650.00 was paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit amount.

The Tenant stated that they gave the Landlord a letter in person on August 28, 2018 in which they provided their forwarding address and requested the return of the security deposit. The Tenant stated that they did not agree to any deductions from their security deposit and that they have not received any amount back.

The Landlord testified that they have not received the Tenant's forwarding address. They stated they kept the security deposit due to unpaid utility bills and garbage left in the rental unit at the end of the tenancy. The Tenant stated their forwarding address at the hearing which was written down and confirmed by the Landlord.

Analysis

Section 38(1) of the *Act* states the following:

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

- (a) the date the tenancy ends, and
- (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 parties agreed that the tenancy ended on August 31, 2018, however they were not in agreement as to whether the Tenant's forwarding address had been provided.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence to establish their claim. As this is the Tenant's claim for the return of the security deposit, it is the Tenant who has the onus to prove the claim, on a balance of probabilities.

Without further evidence to confirm that the Tenant's forwarding address was provided and received by the Landlord, I am not satisfied that it was. However, the Tenant's forwarding address was provided at the hearing and was confirmed by the Landlord. As such, I find that the Landlord has the Tenant's forwarding address as of January 25, 2019, the date of the hearing.

Accordingly, the Landlord now has 15 days from January 25, 2019 to comply with Section 38(1) of the *Act*. Should the Landlord not comply with this section, the Tenant is at liberty to file a new Application for Dispute Resolution and may be entitled to the return of double the security deposit in accordance with Section 38(6) of the *Act*.

I also caution the Landlord that they may not keep a security deposit because they feel entitled to do so. Both parties should familiarize themselves with their responsibilities and rights regarding the security deposit as stated under Section 38 of the *Act*.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, with leave to reapply. The Tenant's forwarding address has been received by the Landlord as of January 25, 2018. The Landlord has 15 days from this date to comply with Section 38(1) of the *Act*.

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 28, 2019

Residential Tenancy Branch