



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 15, 2018, wherein the Tenant sought return of double the security deposit paid and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on March 18, 2019. Both parties called into the hearing.

At the outset of the hearing the Landlord stated that he did not receive the Tenant's Application or evidence and was unaware of the nature of her claim. He further stated that the only information he received about the hearing was an email from the Residential Tenancy Branch sent on March 1, 2019 informing him of the date of the hearing.

The Tenant provided proof that she served her materials on both Landlords at the address of the rental unit. She was not able to provide any information as to whether the packages were received as she did not track the packages. The Landlord confirmed that he lives at the rental unit but claimed he did not receive any such package.

As I had reviewed the Tenant's evidence prior to the hearing, and did not see a copy of her letter to the Landlord requesting return of her security deposit, I asked the Tenant whether she had provided the Landlord with such a letter. The Tenant confirmed that she provided the Landlord with her forwarding address by way of a previous application for dispute resolution. She stated that she did not provide the Landlord with a letter requesting return of her deposit. Section 38 of the *Residential Tenancy Act* provides for the return of security deposit and pet damage deposits and reads as follows:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

A Tenant's right to return of their deposits materializes when they provide the Landlord with their forwarding address in writing and request return of the deposit; it is at this time the Landlord has 15 days in which to return the funds or make an application for dispute resolution seeking authority to retain the funds. Further, pursuant to section 39, if a Tenant does not provide their forwarding address to the Landlord within a year after the end of the tenancy, the Landlord is authorized to retain those funds.

Although the Tenant may have provided the Landlords with her forwarding address on her previous application for dispute resolution (as well as the one before me) this is insufficient for the purposes of section 38. Security deposits are trust funds and must be dealt with in accordance with the *Act*. A Tenant must provide the Landlord with a written request for return of the deposit and the address to which they wish the funds to be sent.

The Tenant confirmed during the hearing that her forwarding address is as provided for on her Application for Dispute Resolution. That address was read to the Landlord and is included on the unpublished cover page of this my Decision.

I informed the Landlord during the hearing that for the purposes of section 38 I find they are now in receipt of the Tenant's forwarding address as of the date of the hearing before me (March 18, 2019) and they therefore have fifteen days from the date of the hearing to make their application for dispute resolution or return the funds to the Tenant.

The parties were also cautioned with respect to the extinguishment provisions contained in section 38.

As the Tenant's application for return of her security deposit was premature it 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: March 18, 2019

Residential Tenancy Branch