



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

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 parties confirmed that they had exchanged their documentary evidence.

Background and Evidence

This tenancy began on July 15, 2018, and ended on November 15, 2018. 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 has not returned any portion of the deposit to the tenant.

The tenant testified that he had provided the landlord with his forwarding address by registered mail on December 11, 2018. The landlord testified that the first time he received the tenants forwarding address was when he received the Notice of Hearing Package and the tenants application. The tenant testified that he filed an application for dispute resolution on December 19, 2018. The tenant testified that he did not give permission for the landlord to retain any portion of his deposit.

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.

The tenant provided documentation to show that on December 11, 2018 he sent the landlord his forwarding address by registered mail. Section 90 of the *Act* deems a party is served five days later when this method is used; I find that the landlord was deemed served the tenants forwarding address on December 16, 2018. The tenant then filed an application for dispute resolution only three days later. The landlord had 15 days to either return the deposit or file an application to retain it. I find that the tenant was premature in making this application as the landlord was not provided the 15 days as required under section 38 of the *Act*. As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing. I informed the landlord that he had 15 days from the date of the hearing, until April 26, 2019, to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply. The remaining portion of 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, until April 26, 2019 to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make 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: April 11, 2019

Residential Tenancy Branch