



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution, made on January 25, 2019 (the "Application"). The Tenant applied for an order that the Landlord return all or part of the security deposit, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant and the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that the Landlord was served with the Application package by registered mail on January 28, 2019. The Landlord acknowledged receipt. In addition, the Landlord testified the Tenant was served with the Landlord's documentary evidence by registered mail. The Tenant responded by testifying it was served in person but acknowledged receipt on May 9, 2019. Neither party raised any issue with respect to service or receipt of these documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Is the Tenant entitled to an order that the Landlord return all or part of the security deposit?

Background and Evidence

The parties agreed the fixed-term tenancy began on May 1, 2018, and was expected to continue to May 1, 2019. However, the parties agreed the Tenant moved out on or about October 2, 2018. The Tenant's roommates, L.H. and A.G., who are not named on the tenancy agreement or in the proceeding, remained and continue to reside in the rental unit. During the tenancy, rent was due in the amount of \$1,800.00 per month. The parties confirmed the Landlord holds a security deposit in the amount of \$900.00. Although the Landlord testified the security deposit was paid by L.H. and A.G., the Tenant disagreed and advised that L.H. and A.G. owe her money.

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 an application to keep them by making 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. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find the Application has been made prematurely. Although the Tenant moved out of the rental unit on or about October 2, 2018, her roommates remained. I was referred to no documentary evidence to suggest the tenancy ended when the Tenant moved out. Indeed, section 45(2) of the *Act* prevents the Tenant and her roommates from ending the fixed-term tenancy, other than in limited circumstances set out in the *Act*. The Tenant is not entitled to the return of the security deposit just because she vacated the rental unit. The Tenant's claim that L.H. and A.G. owe her money is an issue that should be addressed between the Tenant and her former roommates as long as the tenancy continues, not by the Landlord following a dispute resolution hearing.

Accordingly, I find that the Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's Application is dismissed, without 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: May 21, 2019

Residential Tenancy Branch