



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROTHERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

I was designated to hear this matter pursuant to section 58 of the *Residential Tenancy Act* (the *Act*). The tenant applied for authorization to obtain a return of double their security deposit pursuant to section 38 of the *Act*.

The Respondent's agent (the agent) called into this teleconference hearing at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 1:42 p.m. to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the agent and I were the only persons who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of all or part of their security deposit? Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*

Background and Evidence

The agent testified that the tenant never provided them with a copy of their dispute resolution hearing package. The agent only learned of this hearing after receiving an email from the Residential Tenancy Branch (the RTB) reminding the landlord of the date and time of this hearing. The agent contacted the RTB to obtain the call-in information for this teleconference hearing, but did not know what the tenant was applying for in this application.

I noted that the tenant's application maintained that they had sent their forwarding address by text message to the landlord on February 25, 2019, before the tenant vacated the rental unit on February 28, 2019. When I advised the agent that the application was to obtain a return of double the tenant's security deposit, the agent gave undisputed sworn testimony that they had never received the tenant's forwarding address in writing.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

In this case, there is undisputed sworn testimony before me, supported by the tenant's own written evidence in their application, that the tenant has not yet provided their forwarding address for the return of the security deposit to the landlord in writing. Text messages do not meet the requirement that the tenant's forwarding address be provided in writing, especially when the landlord gives undisputed sworn testimony that this forwarding address was not received by the landlord.

Under these circumstances, I find that the tenant's application is premature. There is insufficient evidence that the tenant has provided the landlord with their forwarding address in writing. I dismiss the tenant's application on the basis that the tenant/Applicant did not attend the hearing and has not produced evidence that the landlord has been provided with the tenant's forwarding address in writing.

Conclusion

I dismiss this application as it is premature and the landlord is not yet under any statutory obligation to return any portion of the tenant's security deposit.

In the event that the tenant provides the landlord with their forwarding address in writing within a year of the end of this tenancy, the landlord would only then be required to either return the security deposit in full or apply for dispute resolution to retain any portion of the security deposit within 15 days of receiving the tenant's forwarding address. If the landlord does not meet this requirement, then and only then could the tenant reapply for a monetary Order equivalent to double the value of their security deposit.

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 31, 2019

Residential Tenancy Branch