



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

In this dispute, the tenant seeks the return of her security deposit under section 38 of the *Residential Tenancy Act* (the “Act”) and recovery of the filing fee under section 72.

The tenant applied for dispute resolution on February 26, 2019 and a dispute resolution hearing was held on June 13, 2019. The tenant and the landlord attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised an issue respecting the service of evidence.

I reviewed evidence submitted that met the *Rules of Procedure*, under the Act, and to which I was referred, but have only considered evidence relevant to the issues of this application.

Issues

1. Whether the tenant is entitled to the return of her security deposit.
2. Whether the tenant is entitled to recovery of the filing fee.

Background and Evidence

The tenant testified that the tenancy began on February 1, 2018 and ended on December 1, 2018. Her, and a co-tenant (who is not a party to this dispute) signed a written tenancy agreement which stated that the monthly rent was \$1,300.00. A copy of the tenancy agreement, including an addendum, was submitted into evidence.

The tenant paid a security deposit in the amount of \$350.00 and a pet damage deposit in the amount of \$650.00, for a total of \$1,000.00. The landlord e-transferred the tenant \$500.00 of the security deposit but retained the remaining \$500.00 to cover costs related to cleaning the rental unit.

The tenant testified that she agreed, in writing, to the landlord retaining her portion of a carpet cleaning invoice. That portion was \$78.75. However, she did not agree that the landlord could retain the balance of \$421.25.

The tenant further testified—and the landlord did not dispute her narrative as to the following—that the parties conducted a condition inspection at the start of and at the end of the tenancy, and that a Condition Inspection Report was completed. She then testified that she did not at any time provide her forwarding address to the landlord.

Both parties testified at some length about the state of the rental unit at the end of the tenancy and how 9 puppies (“dumped on me” unexpectedly by the tenant’s boyfriend, explained the tenant) caused a significant amount of damage to the rental unit. The feces and urine left behind by the dogs resulted in the landlord having to expend considerable time and effort to fix.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38 of the Act is about a tenant’s and landlord’s obligations regarding a security and a pet damage deposit at the end of the tenancy. Section 38(1) of the Act states that (emphasis added):

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.

Subsection 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if, 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.

In this dispute, the tenant agreed to the landlord retaining \$78.75 of the unreturned security deposit balance of \$500.00. However—and this is crucial—she did not provide her forwarding address to the landlord. That the landlord had the tenant's email address, or her phone number is insufficient insofar as the tenant's obligations exist under the Act.

Based on the testimony and evidence before me, I find on a balance of probabilities that the tenant had not provided her forwarding address to the landlord as was required under section 38(1) of the Act at the end of the tenancy. Moreover, a forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and is not deemed as providing the landlord with the tenant's forwarding address.

Pursuant to *Residential Tenancy Branch Directive 2015-01*, the landlord shall be considered to have received the tenant's forwarding address on the date that the landlord receives this decision. The tenant's Address for Service of Documents as it appears on the Notice of Dispute Resolution Proceeding shall be considered the tenant's forwarding address.

Upon receiving this decision, the landlord will then have 15 business days to either (1) repay the balance of the security deposit of \$421.25 to the tenant, or (2) apply for dispute resolution claiming against the security deposit.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was not entitled to the return of her security deposit at the time that she filed her application for dispute resolution I dismiss her claim for recovery of the filing fee.

Conclusion

I dismiss the tenant's application with leave to reapply.

I order that the date on which the landlord receives this decision shall be the date on which the tenant has provided her forwarding address to the landlord for the purposes of section 38(1) of the Act. The landlord must then exercise his obligations under section 38 regarding the security deposit within 15 days.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 14, 2019

Residential Tenancy Branch