



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SELECT REAL ESTATE PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDT, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed, for the return of the security deposit and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary matter

At the outset of the hearing the tenant indicated that they are only proceeding with the return of the security deposit.

Issue to be Decided

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy that began on February 1, 2019, and was to expire on January 31, 2020. Rent in the amount of \$1,950.00 was payable on the first day of each month. The tenant paid a security deposit of \$975.00.

The tenant testified that they gave the landlord notice to end the tenancy in February 2019. The tenant stated they vacated the rental unit in March 2019. The tenant stated that they gave the landlord their forwarding address in an email; however, they do not remember when it was sent to the landlord.

The landlord's agent testified that the tenancy did not end until April 23, 2019. The agent stated that rent was paid for April 2019, and the tenant did not return the keys until April 23, 2019, at the move-out inspection.

The landlord's agent testified that the tenant made their application on April 18, 2019, prior to the tenancy ending on April 23, 2019.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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

In this case, the tenant could not provide a date of when they provided the landlord with their forward address that was sent by email. Email is not an approved method of service under section 88 of the Act.

Further, I find the tenancy legally ended on April 23, 2019, when the parties conducted the move-out condition inspection report and the key that gave access to the rental unit were returned.

I am also satisfied that the tenant filed their application for the return of the security deposit prematurely, as they were not entitled to make their application until they have satisfied the provision of section 38, and section 88 of the Act. Therefore, I dismiss the tenant's application with leave to reapply.

At the hearing the tenant's forwarding address was confirmed with the landlord. The landlord was ordered at the hearing that they have 15 days after the date of the hearing held on July 19, 2019, to comply with the provisions of section 38 of the Act, by either returning the security deposit or making a claim against the security deposit.

Conclusion

The tenant's application was filed prematurely. The tenant's application is dismissed with leave to reapply, should the landlord not comply with my above order.

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: July 23, 2019

Residential Tenancy Branch