



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for return of the security deposit and reimbursement of the filing fee.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order for the return of the security deposit pursuant to section 38?

Is the tenant entitled to a reimbursement of the filing fee pursuant to section 72?

Background and Evidence

The tenancy started on August 20, 2018 and the tenancy agreement stated a monthly rent of \$740.00. The tenant paid the landlord \$420.00 at the commencement of the tenancy. The tenant stated that this amount was the security deposit. The landlord stated that this amount was the sum of a \$370.00 security deposit and a \$50.00 cleaning fee.

The tenant testified that she moved out of the rental unit in late March 2019. The tenant testified that she did not send her forwarding address to the landlord. The landlord

testified that she did receive the tenant's forwarding address on the tenant's notice of dispute resolution documents.

Analysis

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 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 (**emphasis added**)

In this case, the tenant admitted that she did not send the landlord her forwarding address. However, the tenant's Application for Dispute Resolution, which forms part of the Notice of Dispute Resolution Proceeding for this hearing, contains a written "Address for Service of Documents" for the tenant. The landlord confirmed that the Notice for this hearing was served to him in person by the tenant.

Accordingly, I deem that the landlord is now in receipt of a written forwarding address for the tenant as provided in the tenant's Application for Dispute Resolution for this hearing. This finding triggers the landlord to take one of the following actions under section 38(1) of the *Act* as follows:

- (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.

As such, I find the tenant's Application to recover the security deposit is premature and the landlord may still address the tenant's security deposit in accordance with the above-noted provisions of section 38 of the *Act*. Given this finding, I do not find that the tenant is entitled to the recover the filing fee from the landlord for this application.

To clarify, this means that the landlord has 15 days from the receipt of this decision to address the tenant's security deposit in accordance with section 38 of the *Act*. Should the landlord fail to address the security deposit within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

Conclusion

Accordingly, I dismiss the tenant's application with leave to reapply to request the return of the security deposit, should the landlord fail to address the security deposit in accordance with 38 of the *Act*, within 15 days of the receipt of this decision. The tenant bears the cost of the filing fee for this application.

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: September 19, 2019

Residential Tenancy Branch