



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:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions. The parties confirmed that they had exchanged their documentary evidence.

Background and Evidence

The parties agreed to the following. This tenancy began on January 1, 2018 and ended on June 1, 2019. Monthly rent was set at \$1500.00. The landlord had collected a security deposit in the amount of \$750.00 at the beginning of the tenancy and has not returned any portion of the deposit to the tenant.

Both parties confirmed and agreed that the first time the tenant provided a forwarding address to the landlord was when she filed for dispute resolution and served notice of this hearing to the landlord.

Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

As the parties agreed and confirmed the landlord was not provided with the tenants forwarding address in writing prior to filing an application for dispute resolution, and as both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing. I informed the landlord that she had 15 days from the date of the hearing, until October 19, 2019, to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply. The remaining portion of the tenant's application is dismissed with leave to reapply.

The tenant's forwarding address was confirmed during the hearing, and the landlord was informed that she had 15 days from the date of the hearing, until October 29, 2019 to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it.

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: October 04, 2019

Residential Tenancy Branch