



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenants sent their hearing documents and evidence to the landlord via registered mail sent on July 17, 2019 and the landlord received these documents. The landlord had also uploaded documents to the Residential Tenancy Branch service portal but did not serve them upon the tenants. I declined to admit the landlord's documents but I informed the parties that I would permit the landlord to orally describe the email communication during the hearing.

I explained the hearing process to the parties and permitted the parties to ask questions.

Issue(s) to be Decided

Are the tenants entitled to return of double their security deposit and pet damage deposit, as claimed?

Background and Evidence

The facts of this case were largely not in dispute and I was provided the following unopposed facts.

The tenancy started on October 1, 2017 and the tenants paid a security deposit of \$837.50 and a pet damage deposit of \$400.00. The tenants vacated the rental unit on February 27, 2019.

The landlord did not prepare a move-in inspection report or a move-out inspection report.

The tenants did not authorize the landlord to make any deductions from their deposits in writing.

The tenants wrote a letter to the landlord with their forwarding address on March 18, 2019 and sent it to the landlord via email. The landlord acknowledged that she received the tenants' email but did not know the date she received it; however, she responded to them, via email, by proposing certain options in an attempt to reach a resolution with respect to cleaning costs and damage to a door. The tenants did not respond to the landlord's emailed proposal.

The tenants stated that they used email to send their forwarding address to the landlord because they had used email to communicate with her in the past; however, I noted that the tenancy agreement provided to me by the tenants included a written service address for the landlord that a complete mailing address.

The tenants submitted that they did print out a copy of their letter of March 18, 2019 in sending evidence to the landlord with their Application for Dispute Resolution on July 17, 2019. I confirmed that the service address appearing on the tenant's Application for Dispute Resolution is still current.

The landlord has not refunded any portion of the tenants' deposits to them and the landlord is of the position she is entitled to recover cleaning costs and losses for damage to the rental unit; however, the landlord has not yet filed an Application for Dispute Resolution to make a claim against the deposits.

For reasons provided in the analysis section of this decision, I found the tenants' Application for Dispute Resolution to be premature, and I gave the parties the opportunity to try to resolve this matter by way of a settlement agreement; however, they were unable to reach a mutually agreeable resolution during the hearing.

Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends, or the tenant gives the landlord a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenants have made a claim under section 38(6); however, I find the tenants' application for return of double the security deposit and pet damage deposit to be premature. In order to succeed under section 38(6) the tenants must prove the date their tenancy ended and the date they gave the landlord their forwarding address in writing as these dates are necessary to determine whether the landlord violated section 38(1) of the Act. The day the tenants vacated the rental unit was not in dispute; however, the tenant's sent a forwarding address to the landlord via email on March 18, 2019 and then made their Application for Dispute Resolution on July 9, 2019. Documents that are to be given to the other party must be served in a method provided under section 88 of the Act. Email is not recognized as an acceptable method of service under section 88 of the Act. It is important to use an acceptable method of service since section 90 of the Act also provides a deeming provision for when a document is received and section 90 does not contemplate emailed documents.

The tenants did provide a forwarding address to the landlord when they served her with their Application for Dispute Resolution and evidence sent on July 17, 2019; however, the tenants were not in a position to make the application without first serving the landlord with their written forwarding address. Therefore, I find this application to be pre-mature and I dismiss it with leave to reapply.

The tenants confirmed that the service address appearing on their Application for Dispute Resolution is still current and I expressly informed the landlord during the hearing that the landlord is considered to be in receipt of the tenant's forwarding address as of today's date and I order the landlord to either: file a Landlord's Application for Dispute Resolution to claim against the tenants' deposits, get the tenants' written consent to retain the deposits, or refund the deposits to the tenants, within 15 days of today's date.

Conclusion

The tenant's application was premature and it has been dismissed with leave to reapply.

The landlord has 15 days from today's date to either: file a Landlord's Application for Dispute Resolution to make a claim against the tenants' deposits, get the tenants' written consent to retain the deposits, or refund the deposits to the tenants in accordance with section 38 of the Act.

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 22, 2019

Residential Tenancy Branch