



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit.

The Landlord was present for the hearing as was a family member of the Tenant who was present for the hearing, representing the Tenant as an agent (the “Agent”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package but stated that he did not receive any evidence from the Tenant. The Agent stated that the Tenant’s evidence was included in the package sent to the Landlord with the notice of hearing documents.

However, in the absence of any information that would establish that the Tenant’s evidence was included in the package and as the Landlord denied receipt of the evidence, I am not satisfied that it was served to the Landlord as required. Therefore, the Tenant’s evidence is not accepted and will not be included in this decision. The Landlord did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and ask questions.

Issue to be Decided

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

Background and Evidence

The Agent testified that the tenancy started on February 1, 2019 and ended on June 22, 2019. The Landlord testified that the Tenant moved in on February 2 or February 3, 2019 and agreed that the Tenant moved out on June 22, 2019. The parties were in agreement that monthly rent was \$650.00 and that the Tenant paid a security deposit of \$325.00 of which the Landlord is still in possession of.

The Agent stated that the Tenant's room as well as the kitchen and bathroom were professionally cleaned at the end of the tenancy. She stated that the Tenant did not agree to any deductions from the security deposit. She also noted that they asked the Landlord many times for the security deposit to be returned but have not received any amount back.

The Agent testified that they sent a text message to the Landlord in July 2019 with the Tenant's forwarding address and that it was also provided on their Application for Dispute Resolution which was sent to the Landlord with the hearing documents on July 19, 2019.

The Landlord testified as to concerns with the cleanliness of the rental unit at the end of the tenancy. He also stated his position that since the Tenant did not provide a full month notice to end the tenancy that he had the right to keep the security deposit.

The Landlord confirmed that the Tenant did not agree to any deductions from the security deposit. He stated that he did not receive the Tenant's forwarding address, other than on the hearing documents received in July 2019.

The Agent confirmed the Tenant's forwarding address at the hearing. The Landlord confirmed that he had this address as stated on the Application for Dispute Resolution.

Analysis

As stated by Section 38(1) of the *Act*, a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address is provided in writing to return the security deposit or file a claim against it.

Section 39 of the *Act* states that if a tenant does not provide a forwarding address within a year of the tenancy ending then the landlord may keep the deposit and the tenant may not apply for the return of the deposit.

Although the Agent stated that the Tenant's forwarding address was provided by text message, the Landlord denied receipt of the address until he received the Notice of Dispute Resolution Proceeding package regarding this application. In the absence of evidence that would confirm that the forwarding address was provided to the Landlord in writing as required, I am not satisfied that it was provided. I also note that text message is not a method of service under Section 88 of the *Act* and that I do not find that an address on an Application for Dispute Resolution an acceptable method of service under the *Act*.

Therefore, as the Tenant's forwarding address was confirmed at the hearing, I find that the Landlord has the forwarding address as of October 25, 2019. As such, the Landlord has 15 days from this date to comply with Section 38 of the *Act* regarding the deposit.

I caution the Landlord to familiarize himself with Section 38 of the *Act* regarding the reasons a deposit may be kept. I note that a security deposit may not be kept just because a landlord feels they are entitled to keep it, such as when a tenant may have provided improper notice to end the tenancy.

Accordingly, as I have found that the Tenant's forwarding address was not provided prior to the hearing, I find that the Tenant's application was submitted too early.

Now that the Landlord has the Tenant's forwarding address, if the Landlord does not comply with Section 38(1) of the *Act* within 15 days, the Tenant may file a new application seeking the return of double the deposit pursuant to Section 38(6) of the *Act*. The Tenant's application is therefore dismissed, with leave to reapply.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, with leave to reapply.

The Tenant's forwarding address was provided at the hearing and therefore the Landlord has 15 days from October 25, 2019 to comply 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 25, 2019

Residential Tenancy Branch