



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for the return of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on August 29, 2019 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in August of 2019 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

In November of 2019 the Tenant submitted an additional 9 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via regular mail, on November 19, 2019. The Landlord stated that this evidence was not received. As the Landlord did not acknowledge receiving the evidence and the Tenant is unable to corroborate her testimony that it was mailed, the evidence was not accepted as evidence for these proceedings.

The Tenant was given the opportunity, during the hearing, to discuss the evidence she submitted in November of 2019. As none of the evidence she submitted was particularly relevant to my decision, the hearing was not adjourned to provide her with the opportunity to re-serve this evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- They signed a tenancy agreement for a fixed term, which began on May 31, 2019;
- The tenancy agreement required the Tenant to pay monthly rent of \$2,500.00;
- The Tenant moved into the rental unit on May 24, 2019;
- They signed a second agreement that required the Tenant to pay daily rent of \$150.00 for the period between May 24, 2019 and May 31, 2019;
- The Tenant paid a security deposit of \$1,250.00;
- The rental unit was vacated on June 30, 2019;
- The Tenant did not authorize the Landlord to retain any portion of the security deposit, in writing;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Landlord stated that the Tenant did not pay the \$1,200.00 in rent she was required to pay for the period between May 24, 2019 and May 31, 2019. The Landlord stated that the Tenant told him that he could apply \$1,200.00 from the security deposit towards unpaid rent for the period between May 24, 2019 and May 31, 2019.

The Tenant stated that she paid \$1,200.00, in cash, for the period between May 24, 2019 and May 31, 2019 and that she did not tell the Landlord to apply any portion of her security deposit to unpaid rent.

The Tenant stated that sometime after July 15, 2019 she left her forwarding address in the Landlord's mail box. The Tenant submitted no evidence to corroborate this testimony.

The Landlord stated that he did not receive the forwarding address that was reportedly left in his mail box. He stated that he did not receive a forwarding address for the Tenant until he was served with this Application for Dispute Resolution.

Analysis:

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$1,250.00 and that this tenancy ended when the rental unit was vacated on June 30, 2019.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

I find that the Tenant has submitted insufficient evidence to establish that she provided the Landlord with her forwarding address, in writing, prior to filing this Application for Dispute Resolution. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates her testimony that it was left in the Tenant's mail box sometime after July 15, 2019 or that refutes the Landlord's testimony that it was not located.

Although I accept that the Landlord received a forwarding address for the Tenant when he received the Application for Dispute Resolution, this does not meet the requirement to provide a separate written notice of a forwarding address. I find it entirely possible that a landlord who received the forwarding address in an Application for Dispute Resolution may conclude that it is too late to file a claim against the security deposit.

As the Tenant has failed to establish that she provided the Landlord with a forwarding address, in writing, prior to filing this Application for Dispute Resolution, I find that the Tenant's Application for Dispute Resolution has been filed prematurely. I therefore dismiss the Tenant's application for the return of her security deposit, with leave to reapply.

Prior to filing another Application for Dispute Resolution, I order the Tenant must serve the Landlord with her forwarding address, in writing, via registered mail.

Upon receipt of the forwarding address, in writing, the Landlord has fifteen days to either return the security deposit or to file an Application for Dispute Resolution claiming against it.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the fee paid to file this Application.

Conclusion:

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

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: December 13, 2019

Residential Tenancy Branch