



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOLIDO PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On September 14, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend the 25-minute hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing and evidence package to the Landlord by registered mail on September 22, 2019 (the registered mail tracking number is listed on the first page of this decision). The tracking history indicated that the Landlord signed for this package on September 25, 2019. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Tenant confirmed that he did not provide a forwarding address in writing to the Landlord, pursuant to the *Act*, prior to making this Application.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Pursuant to Section 38 of the Act, if the Tenant wants the security deposit returned, he must provide a forwarding address in writing to the Landlord first. The undisputed evidence is that the Tenant had not provided the Landlord with his forwarding address in writing until making his Application seeking a return of the deposit on September 14, 2019 and sending this package to the Landlord on September 22, 2019. As such, I find the Tenant's Application to be premature. Therefore, the Landlord is put on notice that he now has the forwarding address and he must deal with the security deposit pursuant to Section 38. The Landlord is deemed to have received the decision 5 days after the date it was written and will have 15 days from that date to deal with the deposit.

If the Landlord does not deal with the security deposit pursuant to Section 38 of the *Act* within 15 days of being deemed to have received the decision, the Tenant can then re-apply for double the deposit, pursuant to the *Act*.

As the Tenant was unsuccessful in his Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on my findings above, I dismiss the Tenant's Application for a return of the security deposit 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: January 17, 2020

Residential Tenancy Branch