



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:

- A return of the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they had served the landlord personally with the notice of hearing and all materials on or about October 24, 2019. Based on the evidence I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the Act on that date.

Issue(s) to be Decided

Is the tenant entitled to a return of the deposit for this tenancy?
Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The tenant testified that this was a tenancy that ended sometime last year. The tenant submits that the landlord holds a deposit of \$430.00 which they have not returned. The

tenant could not recall the date the tenancy ended nor were they able to provide cogent details on whether they had provided the landlord with a forwarding address in writing.

The lone piece of documentary evidence submitted by the tenant consists of a photograph of a corner of an insurance document from ICBC providing the tenant's name and the dispute address. The tenant relies upon this document as evidence of a valid tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

While the tenant submits that they have provided the landlord with a forwarding address in writing they have provided no documentary evidence to support this claim and failed to provide any cogent testimony regarding the manner or date in which the address was provided. I found the tenant's testimony to be evasive and lacking in details or believable information. Based on the paucity of information I find that I am not satisfied that the tenant has provided a forwarding address in writing to the landlord.

Therefore, the landlord's obligation under the *Act* to either return the deposit or file an application has not started. I find that this application is premature as the running of time has not begun. Once the tenant provides a forwarding address to the landlord in writing the landlord will then have 15 days to apply for dispute resolution or return the tenant's security deposit.

Conclusion

I dismiss the tenant's application 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: March 9, 2020

Residential Tenancy Branch