



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On March 10, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*. However, in the Application, it was apparent that the Tenant was seeking a return of the security deposit pursuant to Section 38 of the *Act* and the Landlord understood this as well. As such, this hearing dealt with the issue of the return of the Tenant’s security deposit.

The Tenant attended the hearing with N.B. attending as his translator. G.K. appeared during the conference call on behalf of the Tenant as well. The Landlord attended the hearing with B.A. attending as her translator. All in attendance provided a solemn affirmation.

N.B. advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on March 20, 2020 and B.A. confirmed that the Landlord received this package. 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.

B.A. advised that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of the security deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2019 as an unwritten, month to month tenancy. The parties disagreed on how the tenancy ended, but they agreed that the Tenant gave up vacant possession of the rental unit on or around December 17, 2019. Rent was established at \$1,250.00 per month and was due on the first day of each month. A security deposit of \$625.00 was also paid.

N.B. advised that the Tenant's forwarding address in writing was placed in the Landlord's mailbox "one or two weeks" after the Tenant gave up vacant possession of the rental unit. However, she was not sure when this was done exactly, there was no proof of this letter being written, nor was there any proof of service of this letter.

B.A. advised that the Landlord did not receive this letter and their security camera footage did not show this ever being delivered.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

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. There is conflicting testimony regarding whether or not a forwarding address in writing was ever provided by the Tenant. During the hearing, I explained that as the Tenant submitted insufficient evidence of this, I am not satisfied that the Tenant has provided the Landlord with his forwarding address in writing until making this Application and sending this package to

the Landlord on March 20, 2020. As such, I find the Tenant's Application on this issue to be premature.

Therefore, the Landlord is put on notice that she now has the Tenant's forwarding address and she must deal with the security deposit pursuant to Section 38 of the *Act*. 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 within 15 days of being deemed to have received the Decision, the Tenant can then re-apply for double the deposit, pursuant to Section 38 of the *Act*.

G.K. suddenly appeared unannounced during the hearing and started making submissions. He advised that he was not present at the start of the hearing but came in within the last few minutes and he just started speaking during the hearing. As this person was not present at the start of the hearing, as it was not clear who this person was, as it was not apparent how long he had been present listening to the proceeding, and given his demeanour during his outburst, he was cautioned that his behaviour was inappropriate and not acceptable. His identity was then confirmed, and he claimed to also be a tenant during this tenancy. He was solemnly affirmed and then he was permitted to provide his testimony and participate in the hearing. He advised that it was his position that the Landlord received the Tenant's forwarding address when the Tenant's Notice of Hearing package was accepted; therefore, the 15-day time frame has elapsed.

As the parties were advised during the hearing, as I am not satisfied that the Tenant provided a forwarding address in writing pursuant to the *Act* prior to making the Application, I do not find that this premature Application for a hearing regarding the security deposit would constitute a provision of the forwarding address that complies with the *Act*. Furthermore, I can reasonably infer that a landlord would be of the belief that as a claim for a return of the deposit had already been made, that making an Application before a Decision was rendered would be unnecessary. As such, I reject G.K.'s submissions.

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

Conclusion

Based on above, I dismiss the Tenant's Application with respect to the return of his deposit with leave to reapply. The Landlord is put on notice that she now has the Tenant's forwarding address and she must deal with the security deposit pursuant to Section 38 of the *Act*. 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.

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: July 16, 2020

Residential Tenancy Branch