



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit (the “Deposit”).

The tenants attended the hearing. As the landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenants testified that they served the landlords in person on September 13, 2020; however, the landlords would not sign the proof of service. The tenants testified that because the landlords would not sign the proof of service, they also sent a copy by registered mail, which was sent on September 16, 2020.

I am satisfied that the landlords were served on September 13, 2020, simply by the landlords’ refusal to sign the proof of service, has no impact of the service provision of section 89 of the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the tenants entitled to a monetary order for return of the Deposit?

Background and Evidence

The tenancy began on October 1, 2018. Rent in the amount of \$2,200.00 was payable on the first of each month. A security deposit of \$1,100.00 was paid by the tenants.

The tenants testified that they vacated the premises on July 31, 2020. The tenants stated that they provided the landlord with a written notice of the forwarding address on that day, as it was written in the move-out condition inspection report.

The tenants testified that upon review of their evidence, that they noticed that they had given the landlords the wrong forwarding address, as they accidentally wrote the wrong house number. The tenants stated they did not notify the landlord of the proper address prior to making this application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this matter, the tenants confirmed the address they provided the landlord's in the move-out condition inspection was written wrong. The tenants did not notify the landlords of the problem. I find the tenants' application is premature as they must notify the landlord of their correct forwarding address prior to making an application. Therefore, I dismiss their application with leave to reapply.

The landlords are caution that once they receive the tenants forwarding address, they must comply with section 38 of the Act. Failing to do so, could result in the tenants being entitled to the return of double of their Deposit.

Conclusion

The tenants' application for return of the Deposit is premature. The tenants' application 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: October 30, 2020

Residential Tenancy Branch