



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”) requesting the return of the security deposit. The matter was set for a conference call.

The Tenant and the Landlord attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. During the hearing, it was confirmed that the Tenant had not served their documentary evidence submissions on the Landlord. Accordingly, the Tenant’s documentary evidence submissions will not be considered in these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to the return of his security deposit, pursuant to section 38 of the *Act*?

Background and Evidence

The parties testified that the tenancy began in May 2007, that rent in the amount of \$875.00 was to be paid by the first day of each month. The Tenant testified that they had paid a \$350.00 security deposit at the outset of the tenancy. The Landlord testified that they could not confirm if a security deposit had been paid for this tenancy, as the original tenancy started under a different landlord, who had since passed away, and there was no signed tenancy agreement.

Both parties agreed that the Tenant moved out of the rental unit on April 30, 2018.

The Tenant testified that they provided her forwarding address to the Landlord by email, sent on May 19, 2020.

The Landlord testified that they had not received an email from the Tenant with their forwarding address.

Analysis

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

Section 38 of the Act states:

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.

I find that the parties, in this case, offered conflicting verbal testimony regarding whether or not the Tenant had provided her forwarding address to the Landlord. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances

related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

As it has already been determined that the Tenant did not serve their evidence package on the Landlord and that due to this, the Tenant's evidence cannot be considered during these proceedings, I find that the Tenant has not provided sufficient evidence to prove that they had provided their forwarding address to the Landlord as required. Therefore, I dismiss the Tenant's application with leave to reapply.

Conclusion

I dismiss the Tenant 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: November 2, 2020

Residential Tenancy Branch