



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 16, 2020 (the “Application”). The Tenants applied for return of the security deposit and reimbursement for the filing fee.

This was an adjourned direct request proceeding.

Tenants Z.G. and Q.F. appeared at the hearing and appeared for the remaining Tenants. The Landlord appeared at the hearing with A.S. to assist.

Tenants Z.G. and Q.F. advised during the hearing that they were seeking return of double the security deposit.

During the hearing, the Tenants and I had difficulty communicating given a language barrier. Given this, I asked the Tenants if they could have someone attend the hearing or call into the hearing to assist them. The Tenants did not have anyone to assist them and I proceeded with the hearing.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

During the hearing, it was determined that the rental unit address on the Application is incomplete. I have included the correct address on the front page of this decision.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

A.S. for the Landlord confirmed receipt of the hearing package and Tenants' evidence.

The Tenants testified that they did not receive the Landlord's evidence. A.S. testified that the Landlord's evidence was sent to the Tenants by registered mail using a mail system in another country. A.S. could not provide a tracking number that I could look up and could not point to evidence of service submitted.

Pursuant to rule 3.16 of the Rules of Procedure (the "Rules"), the Landlord was required to prove service of their evidence at the hearing. Given the conflicting testimony about service and the absence of evidence to support A.S.'s testimony, I was not satisfied of service of the Landlord's evidence. I told the parties this and heard them on whether the evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Tenants submitted that the evidence should be excluded. A.S. submitted that the evidence should be admitted.

Pursuant to rule 3.17 of the Rules, I exclude the Landlord's evidence as I find it would be unfair to consider it when I was not satisfied it was served on the Tenants and therefore was not satisfied the Tenants had seen it or could respond to it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Tenants' documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started July 15, 2020. Rent was \$1,700.00 per month. The Tenants paid a \$5,100.00 security deposit.

The Tenants testified that they vacated the rental unit September 28, 2020. A.S. testified that the Tenants vacated the rental unit October 01, 2020.

The Tenants testified that they provided their forwarding address on a Mutual Agreement to End a Tenancy form signed by the parties.

The Landlord through A.S. denied that the address on the Mutual Agreement to End a Tenancy form was a forwarding address for the Tenants and testified that she did not understand it to be the Tenants' forwarding address.

The Tenants pointed out that their forwarding address was also provided in the materials sent to the Landlord with the Application.

Analysis

Section 38 of the *Residential Tenancy Act* (the "*Act*") sets out the obligations of a landlord in relation to dealing with a security deposit held at the end of a tenancy and states:

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.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Pursuant to rule 6.6 of the Rules, the Tenants as applicants have the onus to prove they are entitled to return of their security deposit.

The parties gave conflicting testimony about whether the address on the Mutual Agreement to End a Tenancy form was a forwarding address for the Tenants. The address is written on the form without any context and it does not state anywhere that it is the Tenants' forwarding address.

Providing an address on the Application or as evidence with the Application was not sufficient to trigger section 38(1) of the *Act*. The forwarding address had to be provided separately prior to the Application being filed.

In the circumstances, I was not satisfied the Tenants had complied with their obligation to provide the Landlord with a forwarding address in writing. Given this, I was not satisfied section 38(1) of the *Act* had been triggered and was not satisfied the Tenants are entitled to return of their security deposit at this point.

I found the Application was premature. I dismissed the Application with leave to re-apply. This decision does not extend any time limits set out in the *Act*. I decline to award the Tenants reimbursement for the filing fee in the circumstances.

During the hearing, the Tenants confirmed their forwarding address is as written on the Application. I told the Landlord she is considered to have received the Tenants' forwarding address as of the date of the hearing, February 12, 2021, and that she must deal with the security deposit in accordance with the *Act*.

I also told the parties that the security deposit here was collected in violation of section 19 of the *Act* which states:

Limits on amount of deposits

19 (1) A landlord **must not require or accept** either a security deposit or a pet damage deposit **that is greater than the equivalent of 1/2 of one month's rent** payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

(emphasis added)

Conclusion

The Application is premature and is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 16, 2021

Residential Tenancy Branch