



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lakeview Village
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security deposit - Section 38; and
2. A Monetary Order for compensation - Section 67.

The Parties were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing the Landlord stated that although it received a hearing package in January 2021 it did not receive any notice of hearing. The Landlord stated that the application details are also hard to read and it does not know what its about. The Landlord stated that it did not know about a hearing until the RTB sent the Landlord an email reminder on March 17, 2021. The Landlord stated that it did not contact the RTB when it received the package because the contact details were not included, and the Landlord knew nothing about the dispute process. The Landlord stated that the Tenant was issued a refund of the security deposit. The Landlord confirmed that it was able to read the details set out in the Tenant’s claim for return of the security deposit. The Landlord stated that more time was required to provide a response to the Tenant’s application and asked for an adjournment. The Tenant stated that the hearing package given to the Landlord included the notice of hearing. The Tenant stated that the

Landlord had all kinds of time and that they were aware of everything. The Tenant does not agree to an adjournment.

Rule 7.9 of the Rules of Procedure provide that consideration for an adjournment will include the degree to which the need for the adjournment arises out of the neglect of the party seeking the adjournment. The Landlord's evidence of not having received the notice of hearing in the application and or not knowing anything about the dispute process did not ring true. The Landlord was able to read the application details despite the Landlord claiming at the outset that it could not. For these reasons I preferred the Tenant's evidence that the Landlord did receive the full hearing package that included the notice of hearing. Given the prejudice to the Tenant that would be caused by a further delay, I declined the adjournment.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence Provided

The following are agreed or undisputed facts: The tenancy started on January 1, 2017. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. On or about February 1, 2021, the Landlord returned \$350.00 of the security deposit to the Tenant. The Landlord made no application for a claim to retain any portion of the security deposit.

The Tenant states that the tenancy ended on September 30, 2020. The Landlord states that the Tenant was supposed to move out on that date but did not move out until October 2, 2020. The Tenant states its forwarding address was provided to the Landlord on the Tenant's application. The Tenant cannot recall providing this address earlier. The Landlord states that it did not receive a forwarding address prior to receiving the Tenant's application.

The Tenant states that its claim for compensation is for the length of time the Tenant has had to wait for the return of its security deposit.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As there is no evidence that the Tenant provided its forwarding address to the Landlord prior to making an application for its return I find that its application was made too early.

However, as the Landlord now has the Tenant's confirmed forwarding address on the application, I find that, on the date of this hearing, the Landlord has received the Tenant's forwarding address in writing. The Landlord now has 15 days or until April 3, 2021 to deal with the security deposit as required under the Act. As the Tenant did not provide the forwarding address prior to making its application I dismiss this claim with leave to reapply should the Landlord fail to deal with the security deposit as required. Leave to reapply is not an extension of any limitation date.

As the Act already provides a monetary penalty for the late return of a security deposit by a landlord, I consider that the claim for additional compensation for the same breach is not available to the Tenant and I dismiss the claim for compensation.

Conclusion

The Tenant's claim for return of the security deposit 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 Act.

Dated: March 19, 2021

Residential Tenancy Branch