



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing dealt with the adjourned Direct Request Application filed by the Tenant under the *Residential Tenancy Act* (the “Act”). The Tenant applied for the return of their security deposit. The matter was set for a conference call.

The Tenant, the Tenant’s assistant, and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony 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.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of their security deposit?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that the tenancy began on November 1, 2018, that rent in the amount of \$1,00.00 was to be paid by the first day of each month and that the Tenant paid the Landlord a \$500.00 security deposit at the outset of this tenancy.

The parties agreed that the tenancy ended on August 31, 2019, in accordance with the *Act*.

The Tenant testified that they provided the Landlord with their forwarding address by a letter they personally delivered to the Landlord home on March 5, 2020.

The Tenant also testified that they sent their forwarding address to the Landlord on December 27, 2020, by Canada post mail.

The Landlord testified that there had been a previous hearing with the Residential Tenancy Branch on April 28, 2020, in which the arbitrator in that proceedings found that the Tenant had not served the Landlord with their forwarding address. The Landlord provided a copy of the decision issued from the April 28, 2020 hearing into documentary evidence.

The Landlord testified that they received the Tenant's forwarding address by Canada Post mail on January 27, 2021. The Landlord testified that they had not been provided with the Tenant's forwarding address within a year of the tenancy ending, so they were entitled to keep the security deposit for this tenancy.

The Tenant testified that they had served the Landlord with their forwarding address several times between April 28, 2020, and August 30, 2020. When asked to speak to specifics, the Tenant was unable to provide details of the service of the forwarding address to the Landlord between April 28, 2020, and August 30, 2020.

Analysis

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

Section 38(1) of the *Act* gives a tenant one year from the date the tenancy ends to provide the landlord with their forwarding address, stating the following:

Landlord may retain deposits if forwarding address not provided

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.

I accept the agreed-upon testimony of these parties that this tenancy ended on August 31, 2019. Pursuant to section 39 of the *Act*, I find that the Tenant had until August 31, 2020, to provide the Landlord with their forwarding address.

Additionally, I have reviewed the decision issued as a result of the previous hearing between these parties, and I find that this decision found that as of April 28, 2020, the Tenant had not served the Landlord with their forwarding address.

I have reviewed the totality of the testimony provided during these proceedings and the documentary evidence submitted by both parties, and I find that there is no evidence before me to show that the Tenant had provided the Landlord with their forwarding address by August 31, 2020.

Consequently, I find that the Tenant had extinguished their right to the return of their security deposit for this tenancy, and I dismiss their claim for the return of their deposit in its entirety.

Conclusion

The Tenant's claim for the return of their deposit is dismissed.

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: April 20, 2021

Residential Tenancy Branch