



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The landlords confirmed receipt of the tenant's application and materials and said while they have uploaded their evidence to the Branch, they have not served the tenant. Based on the undisputed testimonies I find the landlord duly served with the tenant's materials in accordance with sections 88 and 89 of the Act and the tenant has not been served with any of the landlord's materials as required under the Act and Rules of Procedure.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on November 1, 2018 and ended on August 31, 2021. The monthly rent was \$2,350.00 payable on the first of each month. A security deposit of \$1,050.00 was collected at the start of the tenancy and is still held by the landlord. The parties prepared a condition inspection report at both the move-in and move-out.

The parties agree that the tenant did not provide a forwarding address on the move-out inspection report or in subsequent correspondence. The tenant says they believed it was futile to provide a forwarding address in writing as required under the Act as the landlords have indicated they intend to retain the full security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's provision of a forwarding address in writing.

The parties agree that the tenant has not provided a forwarding address in writing. Accordingly, I find that pursuant to section 38 of the Act, the landlords' obligation to return the deposits or file an application for authorization to retain all or a portion of the deposit has not commenced as the tenant has not provided a proper forwarding address in a manner consistent with the *Act*. I therefore find that the tenant's application is premature and I dismiss the tenant's application in its entirety with leave to reapply.

The tenant testified in the hearing that the address for service of this application for dispute resolution is the tenant's correct and current forwarding address. Therefore, in accordance with section 71(2)(b) of the *Act*, I find that the landlord has been sufficiently served with the tenants's forwarding address as of the date of the hearing, April 22, 2022.

I find that the landlords have now been served with the tenant's forwarding address as of the date of the hearing, April 22, 2022 and they have 15 days from this date to either return the balance of the deposit not already returned or file an application for authorization to retain those amounts in accordance with section 38 of the *Act*.

Conclusion

The tenant's application is dismissed in its entirety 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: April 22, 2022

Residential Tenancy Branch