



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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 2:12 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Preliminary Issues - Provision of Forwarding Address

The tenant and their advocate testified that the landlord was provided with the tenant's forwarding address on June 30, 2021, which was placed in the landlord's mailbox. The landlord's advocate testified that the tenant's forwarding address was provided again with the hearing packages that were sent the landlord by way of registered mail. The landlord denied ever receiving the tenant's forwarding address.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

RTB Policy Guideline 17, paragraph 10 establishes the following:

The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.

The tenant had applied for the return of their deposit, but the landlord denied ever receiving the tenant's security deposit. As I am unable to determine whether the landlord had in fact received the tenant's forwarding address in writing, the tenant's application is dismissed with leave to reapply.

As both parties were present in the hearing, the tenant's forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I indicated to both parties that today's date, August 9, 2022, serves as the date that the landlord was served with the tenant's forwarding address, and that that the deposit must be dealt with in accordance with section 38 of the *Act*. The tenant's application is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

As both parties were present, the tenant confirmed that they did not consent to email service of any hearing documents. The landlord confirmed that they consented to service to the email address noted on the cover page of this decision.

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: August 09, 2022

Residential Tenancy Branch