



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

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, the Tenant, and the Tenant's son attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The RTB issued the Notice of Dispute Resolution Proceeding package (the "NoDRP package") to the Tenant on January 20, 2022. The Tenant testified that she served the Landlord with the NoDRP package for this hearing by email. The Landlord confirmed receipt of the NoDRP package sometime in January 2022. I find that the Landlord was deemed served with the NoDRP package on January 23, 2022 in accordance with Section 71(2)(c) of the Act.

The Landlord did not serve his evidence on the Tenant, although it was uploaded on the RTB website. RTB Rules of Procedure 3.15 states that the respondent must ensure

evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. As the Landlord's evidence was not served on the Tenant, I decline to consider the Landlord's evidence in this matter.

Issues to be Decided

1. Is the Tenant entitled to an Order for the return of the security deposit?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this oral periodic tenancy began in March 2017. Monthly rent was \$1,200.00 payable on the first day of each month. A security deposit of \$600.00 was collected at the start of the tenancy and was returned to the Tenant on March 15, 2022 by the Landlord. The Tenant vacated the rental unit on November 15, 2021.

At the beginning of the tenancy, the Landlord and the Tenant did a quick walk through of the rental unit. The Landlord did not provide the Tenant with a copy of the move-in condition inspection report. The Landlord gave the Tenant a verbal notice that he wanted to end the tenancy on August 1, 2021 and again on September 1, 2021. The Tenant thought the Landlord wanted to sell his residential property. At the end of the tenancy, and after she finished cleaning the carpets, the Tenant and the Landlord's son, who resides in the upper unit, did a quick walk through of the rental unit. The Landlord did not provide the Tenant with a copy of the move-out condition inspection report.

The Tenant stated that she left her forwarding address on the kitchen counter when she vacated the rental unit. The Tenant did not provide proof of service of her forwarding address. The Landlord said that he used the address that was on the Tenant's cheques to return her security deposit to her, albeit he stated, he sent it late.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Return of security deposit and pet damage deposit

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. (emphasis mine)

I find the tenancy ended when the Tenant vacated the rental unit on November 15, 2021 pursuant to Section 44(1)(d) of the Act. The Landlord had 15 days, from the later of the day the tenancy ends or the date the Landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant. The Tenant did not provide:

- a copy of her forwarding address given to the Landlord;
- a copy of a move-out condition inspection report with the forwarding address provided; or,
- a proof of service of forwarding address form #RTB-41.

I find the Tenant has not provided proof that she provided her forwarding address in writing to the Landlord. The Tenant has one year after the end of the tenancy to provide the Landlord with her forwarding address in writing.

As the Tenant was not successful in her claim, I do not grant her recovery of the application filing fee.

Conclusion

The Tenant has not provided her forwarding address in writing to the Landlord, so this application for the return of her security deposit is premature. The Tenant's application is dismissed with leave to re-apply.

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: August 22, 2022

Residential Tenancy Branch