



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant January 17, 2022 (the “Application”). The Tenant applied for return of their security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant provided the correct rental unit address which is noted on the front page of this decision.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that they emailed the hearing package to the Landlord at an email address the Landlord agreed the Tenant could use to serve documents. The Tenant testified that they did not send their evidence to the Landlord.

I accept the undisputed testimony of the Tenant and find the Landlord was served with the hearing package in accordance with section 89(1)(f) of the *Residential Tenancy Act* (the “Act”) and section 43(2) of the *Residential Tenancy Regulation* (the “Regulations”).

The Tenant was required to serve their evidence on the Landlord pursuant to rules 3.1 and 3.14 of the Rules. Given the Tenant did not serve their evidence on the Landlord, the evidence is excluded pursuant to rule 3.17 of the Rules.

Given I was satisfied the Landlord was served with the hearing package, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided. I have only referred to the testimony I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of their security deposit?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant testified as follows.

The Landlord and Tenant communicated over email. The Landlord agreed to rent the rental unit to the Tenant in exchange for \$1,300.00 in rent per month. The Tenant transferred \$675.00 for the security deposit to the Landlord by email and the Landlord accepted the transfer. There was no written tenancy agreement completed. The Landlord did send the Tenant a receipt for payments made. The tenancy was supposed to start January 01, 2022, and be for a fixed term of one year.

The Landlord agreed the Tenant could move into the rental unit December 26, 2021. The Landlord agreed to meet the Tenant or their agent at the rental unit on December 25, 2021. The Tenant's friend attended the rental unit to meet with the Landlord; however, the Landlord did not attend. The Landlord then told the Tenant they would attend the rental unit January 01, 2022; however, on December 28, 2021, the Tenant asked for their money back and told the Landlord they no longer wanted to move in. The Tenant never moved into the rental unit.

The Tenant did not provide the Landlord with a forwarding address. The Tenant asked the Landlord for their security deposit back by email transfer.

Analysis

I accept the undisputed testimony of the Tenant and find there was a tenancy agreement between the Tenant and Landlord because the parties came to an

agreement about the Tenant renting the rental unit for \$1,300.00 per month and the Tenant paid the Landlord a security deposit of \$675.00.

I find the tenancy ended for the purposes of applying section 38 of the *Act* on December 28, 2021, when the Tenant told the Landlord they no longer wanted to move into the rental unit.

The Tenant acknowledged they did not provide the Landlord with a forwarding address in writing.

Section 38 of the *Act* sets out the obligations of a landlord in relation to dealing with a security deposit held at the end of a tenancy. Section 38(1) states:

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.

Section 39 of the *Act* states:

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.

Given the Tenant has not provided the Landlord with a forwarding address in writing, section 38(1) of the *Act* has not been triggered and the Landlord is not yet required to take steps to deal with the security deposit. I note that providing an email is not sufficient to trigger section 38(1) of the *Act*. The Tenant must provide a physical address as a forwarding address. I also note that providing an address on the Application is not sufficient to trigger section 38(1) of the *Act*.

Given the Tenant did not provide the Landlord with a forwarding address in writing prior to filing the Application, the Application is premature. I dismiss the Application **with leave to re-apply**. This decision does not extend any time limits set out in the *Act*. The limitation period for claims is two years from the end of the tenancy pursuant to section 60(1) of the *Act*.

I decline to award the Tenant reimbursement for the filing fee because the Tenant has not been successful in the Application.

As stated above, if the Tenant wants to receive their security deposit back, the first step is for the Tenant to provide the Landlord with a physical address as a forwarding address in writing. The Landlord will then have to comply with section 38 of the *Act* in relation to the security deposit.

For more information about return of deposits, the parties can refer to the RTB website and the following page: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/returning-deposits>

The parties can also call the RTB and speak to an Information Officer if they need information about tenancy issues, including the security deposit. The contact information for the RTB is on the last page of this decision.

The Tenant asked about getting their rent back from the Landlord. If the Tenant is seeking rent back, the Tenant must file an Application for Dispute Resolution seeking compensation for this, which is a separate claim from the request for return of the security deposit.

Conclusion

The Application is premature. The request for return of the security deposit is dismissed **with leave to re-apply**. The request for reimbursement for the filing fee is dismissed without leave to re-apply. This decision does not extend any time limits set out in the *Act*.

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: September 02, 2022

Residential Tenancy Branch