



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 2, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding. However, neither party served any evidence to each other. Given no evidence was served by either party, I find none of the evidence uploaded to RTB is admissible.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

Both parties agree that the tenancy ended on April 30, 2022. Both parties also agree that the Landlord still holds a security deposit, totalling \$1,150.00. The Tenant stated that he did not know what his address would be until a while after he moved out of the rental unit. As a result, the Tenant stated he did not provide his forwarding address in writing until August 24, 2022, when he sent the Landlord his application for dispute resolution and Notice of Dispute Resolution Proceeding. The Tenant stated that his address was on the front of that envelope, so this is how and when he gave his forwarding address to the Landlord.

The Landlord spoke to reasons why he retained the deposit, but confirmed he has not filed an application against the deposits.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find the Tenant did not properly provide their forwarding address to the Landlord. I note the Tenant said their address was listed on the application package (Notice of Dispute Resolution Proceeding) they served to the Landlord. However, I do not find this is sufficient to satisfy the requirement that they provide their forwarding address in writing. This must be done separately, and clearly, in writing. Since the forwarding address was not properly provided from the Tenant to the Landlord, in writing, I dismiss the Tenant's application to have any remaining amount of the deposit returned.

I find it important to note the following portion of the *Act*:

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.

Since the tenancy ended on April 30, 2022, which is more than one year ago, I find the Tenant has extinguished their right to the return of the deposit, for failing to sufficiently provide their forwarding address in writing, within one year after the end of the tenancy. The Landlord may retain the deposit, in full, and the Tenants application is dismissed, without leave.

Conclusion

The Tenant's application for return of the security deposit has been dismissed, without 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: May 23, 2023

Residential Tenancy Branch