



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 Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 5, 2023. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

The Tenant and the Landlord attended the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence, but did not provide any evidence of his own. No service issues were raised.

The Tenants 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. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenant stated that the tenancy ended on May 31, 2022, after a 1 month tenancy. The Tenant stated that the Landlord still holds her security deposit in the amount of \$636.00.

The Tenant stated she sent the Landlord a text message on May 31, 2022, asking for the return of the deposit. However, the Landlord never returned the deposit, so she filed an application for dispute resolution sometime in July 2022. The Tenant stated that she sent the Landlord her application and evidence at the end of July 2022, and her forwarding address was contained in the dispute resolution package.

The Landlord stated that they only received the Tenant's forwarding address as part of her Notice of Dispute Resolution Proceeding, and did not receive the Tenant's forwarding address in writing, separately. The Landlord confirmed he did not file an application against the deposit, and that he still holds the amount.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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 has not sufficiently provided her forwarding address in writing to the Landlord. I note the Tenant stated she sent her forwarding address via text message. However, I am not satisfied this was a method of service the parties agreed to in advance. I am not satisfied that sending a text message is sufficient to provide a forwarding address, in writing, pursuant to section 38 (1)(b) of the *Act*. The Tenant must utilize an approved method of service under section 88 and 89 of the *Act*, without an agreement in writing to serve in an alternative manner.

Further, I acknowledge that the Tenant also stated she provided her forwarding address in writing as part of her Notice of Dispute Resolution Proceeding and evidence package. However, I find the Tenant should have sent her forwarding address, in writing,

separately, and not as part of the dispute resolution proceeding package. The Tenant should have put her forwarding address in writing, requesting the deposit back (ie- in a written letter) and properly served that letter to the Landlord, independently from the dispute resolution package that was sent.

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.

In this case, the Tenant has failed to sufficiently serve the Landlord with her forwarding address in writing, within one year after the end of the tenancy. I note the tenancy ended at the end of May 2022, which means the Tenant had until the end of May 2023 to properly provide her forwarding address to the Landlord in accordance with the Act. However this was not done, and I find the Tenant has extinguished her right to have a security deposit returned to her. The Landlord may retain the deposit. Since the forwarding address was not properly served from the Tenant to the Landlord, in writing, I dismiss the Tenant's application on this matter, without leave to reapply.

Since the Tenant was not successful with their application, I decline to award them the cost of the filing fee they incurred to file this application.

Conclusion

The Tenants' application 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: June 20, 2023