



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order for the landlord to return the tenants security deposit; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to recover her security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on October 01, 2009 and ended on October 11, 2011. The tenant paid a monthly rent of \$1,100.00. The tenant paid a security deposit of \$550.00 on September 24, 2009.

The tenant states the landlord has not returned the security deposit and the tenant did not give authorisation to the landlord to keep the security deposit.

The tenant states that she gave the landlord her forwarding address in writing on this application for this dispute resolution. The tenant agrees that this address has now changed and agrees she has not given the landlord written forwarding address other than the address on the application.

The landlord named on the application states that he is not the landlord of the tenant but was a roommate of the tenants.

The tenant states this party was her landlord. The security deposit was paid to him and the rent was paid each month to him. Therefore he was her landlord.

Analysis

In dealing with the matter of whether or not the landlord named on the tenant's application is the tenant's landlord. If a tenant of a rental unit sublets to another tenant that original tenant becomes the second tenant's landlord if they collect rent and a security deposit from the tenant. It is deemed that a tenancy has been created for the purposes of this *Act*.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution.

The tenant argues that although she did not give the landlord her forwarding address in writing she did give her address on the application. However the address on the application is classed as an address for service and not necessarily a forwarding address. Consequently, I find the tenant's application is premature and the tenant is not entitled, at this time, to the return of the security deposit until the tenant has provided her forwarding address to the landlord in writing.

As the tenant's application is dismissed at this time the tenant must bear the cost of filing her application.

Conclusion

The tenants' application is dismissed with 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: July 03, 2012.

Residential Tenancy Branch