



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of her security deposit.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the evidence was discussed. I determined that the tenant had not submitted any evidence in support of her application. The landlord confirmed not having served their evidence to the tenant. As a result, I have excluded the landlord's evidence from consideration.

I did allow the landlord to testify from their evidence.

I have reviewed all testimony; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

I heard undisputed testimony that the tenancy started on January 1, 2012, ended on May 31, 2012, monthly rent was \$1035.00 and the tenant paid a security deposit of \$517.50 a few days before the tenancy began.

The tenant said that she provided the landlord her written forwarding address on or about May 20, 2012. When questioned, the tenant confirmed that the written forwarding address was delivered in a telefax transmission to the landlord's office.

The tenant confirmed that she received her security deposit by the landlord, but is seeking an additional amount equivalent to her security deposit as it was not returned within 15 days after the end of the tenancy.

In response, the accountant for the landlord said that the cheque for the security deposit was written on June 11, 2012, but that she did not have signing authority. The next day, the accountant had a medical appointment, learning that she suffered a miscarriage. Due to this she was out of the office until the next Monday, June 18, 2012, to "clean up," discovering that the refund cheque was still in the office. Directly thereafter, on June 18, 2012, the landlord returned the tenant her security deposit via courier.

Upon my inquiry, the landlord stated that the tenant was never informed that their address for service of documents was to be via facsimile transmission. The address for service of documents was the office address, according to the landlord.

Analysis

Section 38 of the *Act* requires that within 15 days of the end of a tenancy or the date the landlord receives the tenant's written forwarding address, whichever is later, the landlord is required to repay to the tenant the security deposit and pet damage deposit or file an application claiming against the deposits. In the event a landlord fails to comply with this provision of the *Act*, then the landlord must pay the tenant double the security deposit and pet damage deposit.

The tenant is applying for the penalty aspect of the provision of the *Act*, the doubling portion, due to her contention that her security deposit has been returned, but not within 15 days.

The obligation of the tenant under section 38 is to provide the forwarding address in writing via an accepted method of delivery of documents pursuant to section 88 of the *Act*. Under this section a party is allowed to deliver documents via facsimile, but only if the other party, the landlord in this case, provides the number as an address for service by the person to be served.

I do not find that to be the case here. Rather, I find the address for service of documents provided by the landlord was their physical address. Therefore I find that

the tenant has never provided the landlord with her written forwarding address in a manner complying with the requirements of the Act.

Conclusion

Due to this I find that the tenant is not entitled to the penalty provision of section 38, the doubling of the security deposit, and I therefore dismiss her application for \$517.50, 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: August 23, 2012.

Residential Tenancy Branch