



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 scheduled to hear a tenant's application for return of his security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the tenant entitled to return of his security deposit?

Background and Evidence

The tenancy commenced April 1, 2012 and the tenant paid a security deposit of \$350.00 on May 8, 2012. The tenancy was set to end August 31, 2012 although the tenant vacated on August 21, 2012.

On October 1, 2012 the tenant applied for return of the single amount of the security deposit plus recovery of the filing fee paid for his Application for Dispute Resolution.

The landlord was agreeable to returning the single amount of the security deposit to the tenant but objected to paying for the filing fee as she submitted she did not have the tenant's forwarding address prior to being served with this Application.

The parties were in dispute as to whether a forwarding address was provided to the landlord prior to the tenant filing this Application for Dispute Resolution. The tenant submitted that he put the forwarding address on the kitchen island on August 21, 2012 and either pointed to it or told the landlord it was there. The landlord submitted that there was no such paper on the kitchen island and she did not receive the tenant's forwarding address, in writing, any other way prior to receiving the tenant's Application for Dispute Resolution. I also heard that other people resided in the house on August 21, 2012.

Analysis

Section 38(1) of the Act provides that a landlord has 15 days after the tenancy ends or receiving the forwarding address in writing, whichever date is later, to either return the security deposit to the tenant or file an Application for Dispute Resolution claiming against it. Any deductions from the security deposit must be made in accordance with the Act and always require the written consent of the tenant or an Arbitrator. If a landlord fails to comply with the above requirements the landlord must pay the tenant double the security deposit.

As the landlord was agreeable to returning the single amount of the security deposit to the tenant I award the tenant that amount, as he claimed.

I have considered whether the tenant is entitled to return of double the security deposit under the Act. Since the landlord denied receiving the tenant's forwarding address, in writing, prior to receiving the tenant's Application for Dispute Resolution the tenant has the burden to prove he gave her a document containing his forwarding address in a manner that complies with the Act. When a document is required or permitted to be given to the other party, section 88 of the Act requires that it be given using one of the acceptable methods of service provided under section 88. Leaving a document on the kitchen counter is not an acceptable method of service under the Act. Therefore, I find the tenant did not meet his burden to show that the landlord received or that he gave the landlord his forwarding address, in writing, prior to filing this Application for Dispute Resolution using one of the acceptable methods of service.

Having been unsatisfied the tenant provided a forwarding address to the landlord, in writing, prior to filing this Application for Dispute Resolution I make no award for recovery of the filing fee.

In light of the above, I provide the tenant with a Monetary Order in the amount of \$350.00 to serve upon the landlord and enforce as necessary.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$350.00 to serve upon the landlord and enforce as necessary.

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: December 20, 2012.

Residential Tenancy Branch