



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application brought by the tenant(s) requesting a Monetary Order in the amount of \$850.00.

A substantial amount of documentary evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

This tenancy began on July 15, 2013 with a monthly rent of \$850.00 due on the first of each month.

The tenants paid a security deposit of \$425.00, and a pet deposit of \$425.00, and both were paid on July 15, 2013.

The tenancy ended on November 15, 2015 and, to date, the landlord has not returned the security deposit or the pet deposit.

The tenant is requesting an Order for return of her security deposit and pet deposit; however she stated that she did not serve the landlord with a forwarding address in

writing before applying for dispute resolution. The tenant stated that her forwarding address in writing is included in the application for dispute resolution.

The landlord testified that she had not returned the security deposit because the tenant had signed an addendum to the tenancy agreement that allowed the landlord to deduct costs of outstanding rent, repairs, and cleaning from the damage deposit.

The landlord has not applied for dispute resolution to keep any or all of the damage deposit or pet deposit.

Analysis

Section 20(e) of the Residential Tenancy Act states:

20 A landlord must not do any of the following:

- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Therefore the landlord's addendum to the tenancy agreement conflicts with the Residential Tenancy Act, and, pursuant to Section 6(3)(a) of the Residential Tenancy Act, is unenforceable, as section 6(3)(a) of the Residential Tenancy Act states:

6 (3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,

The addendum to the tenancy agreement therefore did not give the landlord the right to retain the security deposit, without either getting the tenants written permission at the end of the tenancy to keep the security deposit, or applying for dispute resolution to get an Order to retain all or part of the security deposit.

That being said, section 38 of the Residential Tenancy Act states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

However in this case although the tenant(s) have applied for the return of their security deposit and pet deposit; the tenant(s) did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Therefore at the time that the tenant(s) applied for dispute resolution, the landlord was under no obligation to return the deposit, and this application is premature.

I therefore dismiss this claim with leave to re-apply.

At the hearing the tenant stated that the address in the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today, July 26, 2016.

Conclusion

As stated above, this application for return of the security deposit has been 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 26, 2016

Residential Tenancy Branch