



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD RPP FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A return to personal possessions pursuant to section 65;
- A return of the security deposit for this tenancy pursuant to section 38; and
- Recovery of the filing fee for the application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, present sworn testimony and make submissions.

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's application of October 11, 2018 and evidence. The tenant confirmed receipt of the landlord's evidentiary materials. Based on the undisputed evidence of the parties I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should an order be made regarding the tenant's personal possessions?

Is the tenant entitled to recover the security deposit for this tenancy?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy started on July 1, 2018 and ended on July 22, 2018 when the rental unit suffered a fire making it uninhabitable. The monthly rent was \$1,100.00 payable on the first of each month. The tenant paid a

security deposit of \$1,100.00 which is still held by the landlord. The tenant did not provide a forwarding address to the landlord.

The tenant confirmed at the hearing that their address for service on their application is their forwarding address.

The tenant testified that there were some personal possessions left in the storage shed of the rental unit. The tenant said that the items included snowshoes and some holiday decorations. The parties had arranged for a date in August, 2018 when the tenant could attend and pick up the items. The tenant testified that they did not attend to remove the items as agreed on that date. The landlord was only made aware that the items were left on the property in October, 2018 when a roaming bear tore open the doors to the storage shed. The tenant testified that their life has been in upheaval and they have not been able to collect their possessions as at the date of the hearing.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The tenant testified that they have not provided the landlord with a forwarding address. The tenant confirmed at the hearing that the address for service on their application can be used as a forwarding address.

Accordingly, I find that the landlord has been served with the forwarding address as of the date of the hearing November 23, 2018. The landlord now has 15 days from the date of the hearing to either return the security deposit or to file an application with the Residential Tenancy Branch for authorization to retain the deposit.

I find the tenant's application for a return of the security deposit to be premature as they had not previously provided a forwarding address. I therefore dismiss this portion of the tenant's application with leave to reapply.

Residential Tenancy Regulation 25(2) provides that a landlord may dispose of a tenant's personal possessions left on the property if they believe that the property has a total market value of less than \$500.00. The landlord testified that they believe the property left by the tenant would have a total value of less than \$500.00 but

nevertheless, stored the property and made arrangements for the tenant to retrieve the items. The tenant testified that despite agreeing to a date to collect the items they have not done so.

I find that the landlord has accommodated the tenant beyond any obligations set in the Act or regulations by continuing to store the items. I find that the tenant's failure to retrieve the items was a result of the tenant's own actions and not the landlord. Consequently, I dismiss this portion of the tenant's application without leave to reapply.

As the tenant's application was not successful the tenant is not entitled to recover the filing fee.

Conclusion

The portion of the tenant's application seeking a return of the security deposit is dismissed with leave to reapply.

The balance of the application is 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: November 23, 2018

Residential Tenancy Branch