



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and for the recovery of the filing fee paid for this application.

Both the Tenant and the Landlord were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Landlord did not submit any documentary evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant submitted a written statement and testimony regarding the tenancy and request for the return of his security deposit. He stated that the tenancy began on March 7, 2012 with a previous property owner. He paid a security deposit of \$375.00 at the outset of the tenancy and stated that he has not received any amount of the security deposit back.

The Tenant was unsure of the monthly rent amount at the end of the tenancy and the exact date that he moved out. In his written submission he stated that he moved out on or around May 31, 2018.

The Landlord stated that he became the owner of the rental property in 2013 and that monthly rent at that time was \$750.00 plus half of the hydro bill. He agreed that a security deposit of \$375.00 was paid by the Tenant and had not been returned.

The Tenant testified that he provided his forwarding address to the Landlord in writing by leaving it in the mailbox outside the rental building. He stated that this is how he corresponded with the Landlord during the tenancy. At the hearing the Tenant was unsure of what date he provided this letter, although his written submission states that the letter was left at the time he vacated the rental unit. The Tenant said he does not have a copy of this letter and therefore did not submit it into evidence.

The Tenant stated that he attempted three more times to contact the Landlord after not receiving his security deposit back. After leaving the letter in the mailbox, he sent an email to the Landlord on June 8, 2018 with his forwarding address. The email was submitted into evidence.

The Tenant submitted that he also printed out his address and taped it to the gate of the Landlord's residence two separate times. The Tenant stated that he did not provide permission for the Landlord to withhold any amount from the deposit. He also stated that the Landlord did not arrange a move-out inspection and therefore this was not done.

The Landlord testified that the Tenant would pay rent by leaving it in the mailbox in front of the rental building. The Landlord provided notice to the Tenant to end the tenancy due to an order from the city. He stated that the Tenant received one month of rent compensation as a result of this notice.

The Landlord stated that the Tenant never returned the keys and never contacted him to make arrangements for a move-out inspection. The Landlord said he attended the rental unit and realized the Tenant had already vacated. The Landlord stated that he did not have a contact phone number for the Tenant and that communication during the tenancy was through the building mailbox or in person.

The Landlord submitted that he did not receive the Tenant's forwarding address until he received the Notice of Dispute Resolution Proceeding package. He stated that he was never contacted by the Tenant and did not receive any letters from the Tenant in the mailbox or at his home. The Landlord stated that he was at the rental property for a month straight working on the property after the Tenant moved out and never saw the Tenant or received any mail. He also stated that the email address that Tenant used to send him the forwarding address, as submitted into evidence, is not his email address.

The Landlord further testified that he did not receive any documents from the Tenant at his home address and does not have a gate, so he is unsure as to what home the Tenant left the information at.

The Landlord stated that the Tenant owes him approximately \$355.00 in unpaid hydro bills, which is why he assumed the Tenant had not contacted him or left any information regarding a forwarding address.

Analysis

Section 38(1) of the *Act* states the following:

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.

The parties agreed that the security deposit had not yet been returned and the Tenant testified that his forwarding address was provided to the Landlord in writing at the time he moved out, by email in June 2018 and months later when it was posted on the gate of the Landlord's home.

However, as the Landlord stated that he had not received any communication from the Tenant, and in the absence of documentary evidence to establish that the forwarding address was left in the mailbox or at the Landlord's home, I cannot determine that it was. As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim.

One of the Tenant's attempts was to send his forwarding address by email, but I note that email is not a method of service under Sections 88 and 89 of the *Act*. The Landlord also stated that he did not receive the email and that an incorrect email address was used. As such, I also cannot determine that the Landlord accepted the forwarding address by email and that it was sufficiently received.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. Without sufficient evidence of what the Tenant provided to the Landlord, the dates it was provided or any evidence that would establish that the Landlord was in receipt of the forwarding address, I find that the Tenant has not established that his forwarding address has been provided to the Landlord.

However, the Tenant's forwarding address was provided on the Notice of Dispute Resolution Proceeding and I confirmed during the hearing that the Landlord had the correct address before him. As such, I determine that the Landlord has the Tenant's forwarding address as of the date of this hearing.

Therefore, the Landlord has 15 days from the date of the hearing to deal with the security deposit in accordance with Section 38 of the *Act*. Should the Landlord not comply with Section 38, the Tenant may find reason to file a new Application for Dispute Resolution for the return of double the deposit, pursuant to Section 38(6) of the *Act*.

The Tenant's Application for Dispute Resolution is dismissed, with leave to reapply. As the Tenant was not successful in his application, I decline the award the recovery of the filing fee.

Conclusion

The Tenant's Application for Dispute Resolution 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: December 19, 2018

Residential Tenancy Branch