



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord B.T. attended and spoke on behalf of both landlords and is herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application and evidentiary materials. The landlord confirmed that he did not share his evidence with the tenant. As such, I advised the parties that I could not consider the landlord's documentary evidence, which was only submitted to the Residential Tenancy Branch as it was not served to the tenant. I explained to the landlord that he could provide verbal testimony regarding his evidence during the hearing.

Based on the undisputed testimonies of the parties, I find that the landlord was served with the notice of this hearing and the tenant's evidence in accordance with the *Act*.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. This three-year fixed-term tenancy was scheduled to begin on December 1, 2018, with an end date of November 30, 2021. Monthly rent of \$950.00 was payable on the first of the month. On November 14, 2018, the date the tenancy agreement was signed, the tenant provided the landlord with a security deposit of \$475.00 and obtained a key to the rental unit. The landlord continues to hold the security deposit.

On November 16, 2018, the tenant notified the landlord by email that he was terminating the tenancy agreement and no longer wished to move into the rental unit as scheduled for December 1, 2018.

The tenant submitted a copy of the November 16, 2018 email into documentary evidence. I note in the email the tenant asked to meet with the landlord to return the rental unit key and to collect his \$475.00 security deposit, however the tenant did not provide a forwarding address in writing to the landlord. This was confirmed by the tenant in his testimony during the hearing.

Analysis

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

Section 38(1) 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:

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

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

The legislation is very specific about the requirement for a tenant to provide their forwarding address in writing in order to “trigger” the 15-day time limit for the landlord to return the security deposit. This provision in the legislation ensures that the landlord has the current and correct address for the tenant so that the security deposit refund does not get lost or misdirected by being sent to an incorrect or inactive address.

In this case, the tenant acknowledged in his testimony during the hearing that he did not provide the landlord his forwarding address in writing after giving the landlord notice to end the tenancy.

As such, I find that the tenant has not provided sufficient evidence, on a balance of probabilities, to prove that the landlord was served with his forwarding address in writing at the end of the tenancy.

However, the tenant’s Application for Dispute Resolution, which forms part of the Notice of Dispute Resolution Proceeding for this hearing, contains a written “Address for Service of Documents” for the tenant. In the hearing, the tenant confirmed that the “Address for Service” provided on the Application for Dispute Resolution was a valid address for him. The landlord confirmed that he was in receipt of the tenant’s Application for Dispute Resolution for this hearing, and that he understood that this contains the tenant’s Address for Service. For the clarity of both parties, I have noted that tenant’s Address for Service, as it appears on the tenant’s Application for Dispute Resolution, on the cover sheet of this Decision.

Accordingly, I deem that the landlord is now in receipt of a written forwarding address for the tenant as provided in the tenant’s Application for Dispute Resolution for this hearing. This finding triggers the landlord to take one of the following actions under section 38(1) of the *Act* as follows:

- (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.

As such, I find the tenant's Application to recover the security deposit is premature and the landlord may still address the tenant's security deposit in accordance with the above-noted provisions of section 38 of the *Act*.

To clarify, this means that the landlord has 15 days from the deemed receipt date of this decision to address the tenant's security deposit in accordance with section 38 of the *Act*. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision. Should the landlord fail to address the security deposit within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

Conclusion

Accordingly, I dismiss the tenant's application with leave to reapply to request the return of double the security deposit, should the landlord fail to address the security deposit in accordance with 38 of the *Act*, within 15 days of the deemed receipt date of this decision.

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: May 08, 2019

Residential Tenancy Branch