



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

The tenant applied for the return of their security and pet damage deposits pursuant to section 38 of the *Residential Tenancy Act* ("Act"). In addition, the tenant applied for recovery of the filing fee under section 72 of the Act.

Both parties attended the hearing on February 18, 2021, which was held by teleconference. No issues of service, specifically in respect of the parties' evidence, were raised by the parties.

Preliminary Issue: Landlord Did Not Receive Tenant's Forwarding Address

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the preliminary issue in this application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on October 1, 2017 and ended on September 30, 2020. Monthly rent was \$950.00. The tenant paid a security deposit of \$450.00 and a pet damage deposit of \$450.00. The landlord retains both deposits.

The tenant testified that on the last day of the tenancy she provided her forwarding address, in writing, to the landlord by leaving a document on a chair outside on the rental unit. From a photograph submitted by the tenant, it appears that she also put a couple of rocks on top of the document.

The landlord testified that she did not locate or retrieve the document that was left on the chair. She explained that she never uses the door near to where the chair was, and, that the document was "probably blown into the neighbour's hayfield."

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

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.

In this dispute, the landlord testified that she never received the tenant's forwarding address in writing and the tenant was unable to prove that the landlord received her forwarding address. As such, section 38(1) of the Act is not activated until the landlord receives the tenant's forwarding address.

Situations such as this one necessitates that I follow *Residential Tenancy Branch Practice Directive 2015-01, "Forwarding Address for the Return of a Tenant's Security Deposit."* This practice directive states that a forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally, landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the security and pet damage deposits.

Pursuant to the above-noted directive, I did the following in the hearing:

1. confirmed with the tenant that the address for service on their Application for Dispute Resolution is her correct and current forwarding address; the landlord likewise confirmed that she had recorded the tenant's forwarding address;
2. explained to the landlord that she has now been served with the forwarding address and must deal with the security and pet damage deposits pursuant to section 38(1) of the Act; and

3. informed the landlord that February 18, 2021 is the ordered date the landlord received the tenant's forwarding address.

Conclusion

I hereby dismiss the tenant's application *with* leave to reapply. The tenant has the right to reapply if the landlord does not claim against or return the deposits in full within 15 days of February 19, 2021.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 18, 2021

Residential Tenancy Branch