



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing took place by conference call based on an Application for Dispute Resolution filed by the Tenant August 25, 2022 (the “Application”). The Tenant applied:

- For return of the security deposit
- For compensation
- To recover the filing fee

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord.

The Tenant provided evidence for the hearing. The Landlord did not provide evidence for the hearing. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package and their evidence were sent to the Landlord’s residence by registered mail the day after they received it from the RTB. The Tenant said the Landlord lived in the upper part of the house the Tenant rented.

I accept the undisputed testimony of the Tenant about service and find the Landlord was served with the hearing package and Tenant’s evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). I also accept the Tenant complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

Given I was satisfied of service, I continued with the hearing without the Landlord present. The Tenant was given an opportunity to provide relevant evidence and submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of the security deposit?
2. Is the Tenant entitled to compensation?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant testified as follows.

There was a verbal tenancy agreement between the parties. The Tenant paid a \$930.00 security deposit. The Tenant moved out of the rental unit March 23, 2022.

The Tenant did not give their forwarding address to the Landlord in writing because they did not have an address to give. The Tenant and Landlord agreed the Landlord would e-transfer the security deposit and the Tenant provided their email address.

The Tenant is seeking \$5,000.00 in compensation for the time, energy and money it took to get the security deposit back. The Landlord told the Tenant they did not give the security deposit back because they did not want to. Trying to get the security deposit back caused the Tenant significant emotional and financial stress. Further, there were 50 break-ins at the rental unit during the tenancy and the Landlord did nothing about these or to protect the Tenant.

The Tenant provided a note stating, "Received \$930.00 for deposit on Jan 18, 2022".

Analysis

Under rule 6.6 of the Rules, the Tenant must prove they are entitled to return of the security deposit and the compensation sought.

Under section 38 of the *Act*, the Landlord does not have to return the security deposit until the Tenant provides the Landlord a forwarding address in writing. The tenancy ending **and** the Tenant providing the Landlord with a forwarding address in writing is what triggers the Landlord's obligation to then deal with the security deposit in accordance with the *Act*.

Further, under section 39 of the *Act*, if the Tenant does not give the Landlord a forwarding address in writing within one year after the end of the tenancy, the Landlord is allowed to keep the security deposit and the Tenant no longer has a right to return of the security deposit.

A forwarding address must be a physical address, an email address is not considered a forwarding address under the *Act*. When a tenant cannot provide their own address for whatever reason, they need to provide a physical address that they can be reached at such as an address of a family member or friend. The forwarding address does not have to be where the tenant lives, but it must be a physical address. Further, tenants have one year after the end of the tenancy to provide an address.

The Tenant acknowledged they did not provide the Landlord with a forwarding address in writing. The Tenant said the parties agreed the Landlord would return the security deposit by e-transfer and that the Tenant gave the Landlord their email address; however, providing an email address does not trigger section 38 of the *Act* or the Landlord's obligation to deal with the security deposit in accordance with the *Act*. Further, there is not convincing evidence before me of an agreement between the parties about the security deposit.

Given the above, the Tenant's request for return of the security deposit is dismissed without leave to re-apply. The Tenant moved out of the rental unit March 23, 2022, and therefore it has been more than one year after the end of the tenancy that the Tenant has not provided their forwarding address to the Landlord and section 39 of the *Act* applies. The Landlord is allowed to keep the security deposit.

Under section 7 of the *Act* and as explained in RTB Policy Guideline 16, the Tenant must prove the Landlord breached the *Act*, *Residential Tenancy Regulation* or tenancy agreement to be entitled to compensation.

In relation to the request for compensation for the Landlord failing to return the security deposit, as explained above, the Landlord did not have to return the security deposit because the Tenant has not provided the Landlord with a forwarding address in writing. The Landlord's failure to return the security deposit is not a breach of the *Act*, *Residential Tenancy Regulation* or tenancy agreement and the Tenant is not entitled to compensation for this issue. This request is dismissed without leave to re-apply.

In relation to the request for compensation based on there being numerous break-ins at the rental unit during the tenancy and the Landlord not acting regarding this, I dismiss this request without leave to re-apply because there is no convincing evidence before me about break-ins during the tenancy or the Landlord failing to address this issue.

The Tenant is not entitled to recover the filing fee because they have not been successful in the Application.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 19, 2023

Residential Tenancy Branch