



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD

Introduction

This hearing was convened in response to a Tenants' Application for Dispute Resolution (the "Application") made on August 25, 2016 for return of the Tenants' remaining security deposit and, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation, or tenancy agreement.

The female Tenant and the female Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenants' Application and her evidence. The Tenant confirmed receipt of the Landlords' documentary and photographic evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence on the relevant issues below, make submissions to me, and cross examine the other party.

The Tenant consented to amend the spelling of the Landlord's first name and the Landlord's mailing address on the Application, which is detailed on the front page of this Decision.

Issue(s) to be Decided

Are the Tenants entitled to the remaining amount of their security deposit?

Background and Evidence

The parties confirmed that this oral tenancy started in August 2015 on a month to month basis. Rent of \$630.00 was payable by the on the first day of each month. The Tenants paid the Landlords a security deposit in the amount of \$315.00 on August 11, 2015. No interest is payable on this amount.

The parties confirmed that the tenancy ended on April 15, 2016. The Landlord also confirmed that she had not completed a move-in Condition Inspection Report at the start of this tenancy pursuant to the provisions of Section 23 of the Act.

The Tenant testified that after the tenancy ended, the Landlords paid her father in person with cash of \$200.00 from the \$315.00 security deposit the Landlords were holding in trust. The Tenant testified that the Landlords continued to retain \$150.00 to date without having the Tenants' consent to do so.

When the Tenant was asking about how they had provided the Landlords with their forwarding address, the Tenant referred to a letter dated June 2, 2016 which requested the return of the balance; however the letter did not detail the Tenants' forwarding address. The Tenants rely on the fact that they put their forwarding address on the front of the envelope as the return address, as evidence that the Landlords were provided their forwarding address and submitted that the Landlord knew this. The Tenant submitted that in any case, the address on their Application was the correct address to be used by the Landlords.

The Landlord confirmed that she had not been provided with a forwarding address in the letter, but did acknowledge receipt of the envelope with the Tenant's forwarding address on it.

Analysis

Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it.

On the basis of the undisputed evidence before me, I accept that the tenancy ended on April 15, 2016. Section 38(1) of the Act makes it clear that a landlord's obligation to deal with a tenant's security deposit at the end of the tenancy is only triggered when the tenant provides a forwarding address in writing.

I find that it would be an inconsistent application of the law to conclude that the Tenants had provided the Landlords with a forwarding address in writing if the Tenants only provided the address when the landlords were served with the Application. I find the legislation contemplates that the forwarding address be provided, in writing, prior to a tenant filing an Application. I find it would be unfair to the Landlords to conclude differently, as the Landlords may conclude that it is too late to make a claim against the

deposit because the matter is already scheduled to be adjudicated.

In addition, I do not accept that it is sufficient for the Tenants to have provided the Landlords with their forwarding address on the front of the envelope containing a letter that requested the return of the security deposit. I find it would have been proper for the address to have been clearly indicated in the letter and not disguised or misrepresented as return address on the front of the envelope.

Therefore, I am only able to conclude the Tenants have not put the Landlords on proper notice of their forwarding address pursuant to the Act. Therefore I dismiss the Tenants' Application as it is premature. As the Landlord was present during the hearing, the Tenant confirmed her forwarding address during the hearing. This was confirmed with the Landlord and is also documented on the front page of this Decision for clarity purposes.

As a result, I informed the Landlord that they have 15 days from the date of this hearing, namely until March 14, 2017, to either return the Tenants' remaining security deposit of \$115.00 or file an Application against it. However, the Landlords should apprise themselves of the consequences of not meeting the reporting requirements as laid out by Section 24(2) of the Act with respect to the return of the remainder monies.

Conclusion

The Tenants' Application for the return of the remaining security deposit is premature. The Landlords are obligated to deal with the Tenants' security deposit in accordance with the Act by March 14, 2017. The Tenants are at liberty to re-apply after this date if the Landlords fail to comply with the Act.

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: February 27, 2017

