



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' request for return of double the security deposit, interest on the security deposit, overpayment of hydro and water bills and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard.

Issues(s) to be Decided

1. Have the tenants established an entitlement to return of the security deposit or double the security deposit, plus interest, and overpayment of the hydro and water bills?
2. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony, I make the following findings. The fixed term tenancy commenced August 1, 2007 and ended May 1, 2008. The tenants paid a security deposit of \$1,575.00 in late July 2007. One of the co-tenants and the landlord met in person in September 2008 and the landlord refunded the tenant \$116.00 of the security deposit. The landlord has not paid the balance of the security deposit to the tenants.

The tenant testified that he gave the landlord's teenaged son the tenant's forwarding address in writing on November 6, 2008. The landlord testified that her son is currently 16 years old and that her son did not give her the tenant's forwarding address. The tenant questioned the landlord's testimony by stating that the landlord had served him

with documents for this hearing at his address rather than the service address provided on the Tenant's Application for Dispute Resolution. The landlord claimed that she learned of the tenant's address by way of the return address that appeared on the envelope used by the tenant to serve the landlord with the hearing documents for this dispute resolution proceeding. The tenant acknowledged that it was possible he used his address on the envelope as opposed to the service address supplied on the Tenant's Application for Dispute Resolution.

Analysis

The landlord has fifteen days from the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever date is later, to repay the security deposit to the tenant or file an Application for Dispute Resolution.

Section 88 of the Act provides for the acceptable ways a party may serve the other party with documents, other than documents for a dispute resolution proceeding. In order to determine whether the tenant gave the landlord a forwarding address in writing on November 6, 2008, I considered whether the tenant gave the address to the landlord using any of the methods provided in section 88. Section 88 of the Act provides that a party may give the other party documents:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

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- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
- (j) by any other means of service prescribed in the regulations.

I have insufficient evidence to find that the landlord's teenaged son is an agent for the landlord and I do not find the tenant gave the landlord his forwarding address under 88(b). Nor do I find the teenaged son meets the definition of an adult and giving the forwarding address to the landlord's son does not meet the requirements of 88(e). Since the landlord denied receiving the forwarding address from her son and the tenant could not prove the landlord's son did give it to the landlord, I do not find it appropriate to deem the service to be adequate.

In light of the above, I do not find that the tenants have sufficiently given the landlord a forwarding address in writing for purposes of returning the security deposit. Should the tenants provide a forwarding address in writing after this hearing and the landlord does



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not comply with the requirements of the Act with respect to returning the security deposit, the tenants are at liberty to make another application to request a Monetary Order.

As the tenants were not successful in this application, I do not award the filing fee to the tenants.

Conclusion

The tenants' application 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: April 09, 2009.

Dispute Resolution Officer