



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit, for compensation equivalent to the amount of the security deposit due to the Landlord's failure to return the deposit within the time limits required under the Act and to recover the filing fee for this proceeding.

This matter was originally heard on May 19, 2010 at which time I issued a Decision and Monetary Order in the amount of \$1,064.88 to the Tenant. The Landlord did not attend that hearing. On May 31, 2010, the Landlord applied for a Review of that Decision which was granted and in a Review Decision dated July 8, 2010 the original hearing was ordered to be re-convened. Notices of the Re-convened hearing were mailed to each of the Parties on or about July 9, 2010. On July 19, 2010, an Information Officer from the Residential Tenancy Branch contacted the Tenant to advise her to re-serve her Application and evidence package on the Landlord prior to the re-convened hearing. The Landlord claimed that she has never received a copy of the Tenant's application or evidence in this matter.

On August 6, 2010, the Residential Tenancy Branch received a written request from the Tenant to adjourn the re-convened hearing. On the same date, an Information Officer from the Residential Tenancy Branch contacted the Tenant and advised her that in the absence of a mutual agreement to adjourn the re-convened hearing, the Tenant's adjournment application would have to be made at the re-convened hearing. The Tenant was also advised that she could have an advocate or agent attend the hearing on her behalf. The re-convened hearing started at 9:00 a.m. as scheduled, however, by 9:10 a.m., no one had dialled into the conference call on behalf of the Tenant. The Landlord opposed the Tenant's adjournment request. Given that the Tenant was advised to have an agent attend on her behalf to seek an adjournment should it be opposed and given the Landlord's opposition, the Tenant's application for an adjournment is dismissed.

The Landlord argued at the hearing that the Tenant should not be granted leave to re-apply simply because she failed to attend the hearing as her application was an abuse of the dispute resolution process. In particular, the Landlord claimed that the Tenant intentionally provided the Landlord with a false forwarding address in order to obtain a Monetary Order for double the amount of the security deposit and to prevent the Landlord from making a claim against her for unpaid rent and damages to the rental



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unit. The Landlord further claimed that at the original hearing of this matter, the Tenant misled the Branch by making alterations to the document containing her alleged forwarding address to show a different address. In support, the Landlord provided a copy of the same letter dated October 19, 2009 sent to her by the Tenant which had no alterations to the Tenant's (incorrect) forwarding address. The Landlord admitted that she had not given the Tenant a copy of this evidence because she said she has not received the Tenant's address for service.

The Landlord argued that as a result of the Tenant's failure to provide her with a correct forwarding address within one year of the end of the tenancy, the Tenant had forfeited her right to make a claim against the security deposit pursuant to s. 39 of the Act.

Even though the Tenant did not serve the Landlord with her application (which could warrant dismissing the Tenant's application with leave to reapply), I find that the Landlord was prepared to respond to that application and as a result of the Tenant's failure to attend the re-convened hearing to give evidence in support of her application, it is dismissed *without* leave to reapply.

Conclusion:

The Tenant's application is dismissed without leave to reapply. Pursuant to s. 82(3) of the Act, ***the Decision and Monetary Order in the amount of \$1,064.88 in this matter dated and issued on May 19, 2010 are cancelled.***

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: August 31, 2010.

Dispute Resolution Officer