



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 an application filed by the tenant seeking:

1. A monetary Order for money owed or compensation for damage or loss; and
2. Recovery of the security deposit paid.

The landlord did not appear at the hearing. The tenant testified that she served the landlord with her Application for Dispute Resolution by sending it to the landlord by registered mail which registered mail was returned by Canada Post marked “unclaimed”. Sending an application by way of registered mail is method of service allowed under the *Residential Tenancy Act* and the party being served thus is deemed served five days after the registered mail is sent regardless whether the registered mail is claimed by that party. I therefore find that the landlord has been duly served with the tenant’s Application.

The tenant gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to recovery of double the security deposit paid?

Background and Evidence

The tenant testified that this tenancy began on October 3, 2008 at which time she paid a security deposit of \$250.00. The tenant testified that the tenancy ended on August 15, 2010. The tenant testified that the landlord has not returned the security deposit. With respect to the provision of her forwarding address the tenant testified that she has not provided her forwarding address to the landlord.

The tenant submitted that she is also making a claim for compensation because the landlord verbally and sexually harassed her.

Analysis

With respect to the tenant's application for the return of double the security deposit Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, whichever is the latter, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The triggering event is the provision by the tenant of the forwarding address. In this case the evidence is that the tenant has not provided a forwarding address to the landlord. Therefore the landlord's obligation to return the deposit or make application to retain it has not been triggered.

In most cases this application would be dismissed with leave to reapply, however as the tenancy ended over a year ago the landlord's obligation to return the deposit no longer exists. The tenant's application for recovery of the security deposit is therefore dismissed.

With respect to the tenant's submission that she is also making an application for sexual harassment and verbal harassment, while the tenant alleges she made such a claim her Application for Dispute Resolution states only that she is seeking \$500.00 which she states is made up of the return of her security deposit of \$250.00 and a \$250.00 "penalty" as allowed under the Act. Administrative fairness requires that the landlord know the full case being made against him the tenant is therefore bound by the monetary amount sought in her application. Her claim for pain and suffering has not been quantified and any amount at all would go beyond the \$500.00 claimed, it is therefore dismissed.

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*.
