



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of double the security deposit and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began May 1, 2010 with monthly rent of \$800.00 and the tenant paid a security deposit of \$400.00.

The tenant testified that she vacated the rental unit on December 30, 2011 and on January 5, 2012 provided the landlord with her forwarding address in writing and requested return of the security deposit.

The tenant's advocate stated that the tenant's security deposit was sent to the tenant on January 15, 2012 and received by the advocate's office on January 24, 2012. The advocate stated that they were unaware of the legislation adding 3 days for service by mail and had been of the understanding that the tenant had to be in receipt of the security deposit within the 15 day time limit.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

The landlord in this case was sent the tenant's forwarding address by mail on January 5, 2012. With the addition of 5 days for service by mail the 15 day time limit would have effectively started January 10, 2012 with a deadline of January 25, 2012. As the security deposit was returned to the tenant on January 19, 2012, the landlord did comply with the Act. The Act does not state that the security must be in the tenant's hand within the 15 days, just that '*the landlord must return the security deposit or apply for dispute resolution within 15 days*'.

Residential Tenancy Guideline **12 Service Provisions** speaks to:

10. DEEMED SERVICE

The Legislation deems that a document not served personally, has been served a specified number of days after service:

- *if given or served by mail, on the fifth day after mailing it*
- *if given or served by fax, on the third day after faxing it*
- *if given or served by attaching a copy of the document to a door or other place, on the third day after attaching it*
- *if served by leaving a copy of the document in a mail box or mail slot, on the third day after leaving it*

As the tenant has not been successful in their application the tenant is not entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is dismissed without 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 3, 2012

Residential Tenancy Branch