



Dispute Resolution Services

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 a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed on most of the facts. The tenant paid a total of \$1,200.00 for security and pet deposits, she vacated the rental unit on January 31, 2012 and the landlord returned the deposits in full on February 24, 2012. At issue is whether the landlord returned the deposits within 15 days of having received the forwarding address.

The tenant testified that she sent the landlord an email with her forwarding address on February 3, 2012. The landlord acknowledged having received an email that had been sent on that date, but testified that he did not open the email until sometime later. He testified that he lives in a remote area in which his access to the internet is somewhat intermittent.

The tenant argued that even if he did not receive the email on February 3, the landlord knew her business address.

Analysis

Section 38(1) of the Act provides that within 15 days of the date the tenancy end and the landlord receives the forwarding address in writing, he must either repay the deposits in full or make a claim against them. In order to prove her claim, the tenant must not only prove that she sent her forwarding address on a certain date, but she must also prove that the landlord received her address.

The Act contemplates several means of service of documents on another party, but does not contemplate the use of email and therefore provides no provision respecting when documents served by email are deemed to have been received. When a party sends an email to another party, unless the other party either replies to the email or acknowledges receipt, there is no statutory authority under which I can deem the communication to have been received. While the landlords may have been aware of the tenant's business address, the Act requires the tenant to provide a forwarding address in writing in order to trigger the landlords' obligation to deal with the deposit.

I find that the tenant has failed to prove that the landlords received her forwarding address more than 15 days prior to the time it was returned and accordingly I dismiss the claim.

Conclusion

The claim 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: May 14, 2012

Residential Tenancy Branch