



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was set to deal with cross applications. The tenants had applied for return of double the security deposit. The landlord had applied for monetary compensation for damage to the rental unit. Only the tenants appeared at the hearing despite leaving the teleconference call open for 20 minutes.

As the landlord failed to appear at the scheduled hearing and the tenants appeared and confirmed they were prepared to deal with the landlord's application, I dismissed the landlord's application without leave to reapply.

The tenants were asked several times to prove service of their application upon the landlord. The tenants filed their application on May 14, 2012. The tenant initially testified the tenants' application was sent to the landlord on April 21, 2012. The tenant changed her testimony to say it was done on June 28, 2012 via registered mail at the instruction of the Residential Tenancy Branch. After informing the tenant she failed to prove service of the application in accordance with the requirements of the Act, the tenant changed her testimony again to say she may have mailed the application to the landlord via regular mail on or about May 14, 2012.

The Act requires that an applicant serve a copy of their application and Notice of Hearing to the other party within three days of making an application. Service of a tenant's application involving a monetary claim may be served upon a landlord in person or via registered mail. Even if I accepted the tenant's unresponsive and changing testimony, regular mail is not a permissible method to serve an Application for Dispute Resolution involving a monetary claim. Therefore, I dismissed the tenant's application.

Issue(s) to be Decided

Disposition of the security deposit.

Background and Evidence

The tenant testified that a security deposit of \$725.00 was paid to the landlord.

Analysis

A security deposit is the tenant's money that the landlord holds in trust for the tenants', to be disposed of in accordance with the Act. Where a landlord's request to retain the security deposit has been dismissed or applications filed by both parties involving the security deposit have been dismissed I find it appropriate to make an order for the disposition of the security deposit as failure to do so would result in unjust enrichment for the landlord. This finding is consistent with Residential Tenancy Policy Guideline 17 which deals with security deposits and provides, in part:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act.

The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

Based upon the foregoing, having dismissed both applications, I order the landlord to return the security deposit to the tenants.

Provided to the tenants with their copy of this decision is a Monetary Order in the amount of \$725.00. The tenants must serve the Monetary Order upon the landlord and enforce as necessary.

Conclusion

Both applications were dismissed. The landlord is ordered to return the security deposit to the tenants. The tenants have been provided a Monetary Order in the amount of \$725.00 to serve upon the landlord and enforce as necessary.

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: July 10, 2012.

Residential Tenancy Branch