



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit and the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 2, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

This tenancy started on September 1, 2012 as a month to month tenancy. Rent was \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on June 17, 2012.

The Tenant said there was no move in or move out condition inspection reports completed and signed. The Tenant continued to say she sent the Landlord an email on September 28, 2012 with her notice to end the tenancy for October 31, 2012. The Tenant said the email of September 28, 2012 had an attachment with her forwarding address on it. The Tenant included the email and the attachment in her evidence package. The Tenant also said she gave the Landlord her Notice and forwarding address in writing by a registered mail letter in September, 2012 which she sent to the address on the tenancy agreement, but that address was not correct and the Landlord did not receive the registered letter. The Tenant said she had the tracking information on this letter, but it was not available for the hearing and she did not include it in her evidence package. The Tenant said she received the Landlord’s correct address in the first part of October, 2012.

The Tenant said that she has applied for double her security deposit in the amount of \$950.00 and the filing fee of \$50.00 less \$425.00 which the Landlord returned to her in January, 2013, after receiving the Tenant's application and hearing package. The Tenant said she is requesting monetary compensation of \$475.00 from the Landlord.

The Landlord said she did receive the Tenant's email of September 28, 2012 but she could not open the attachment so she did not retrieve the Tenant's forwarding address. The Landlord continued to say that she had a friend help her open the attachment, but she could only read parts of it because the attachment was unclear. The Landlord said she could not get the Tenant's address from the attachment. The Landlord continued to say that when she received the Tenant's address with the hearing package on January 5, 2013, she sent the Tenant the security deposit in the amount of \$425.00. The Landlord said when she received the Tenant's hearing package it was the first time she had the Tenant's forwarding address in writing.

The Tenant said the Landlord responded to her email of September 28, 2012 on September 29, 2012 with information the Landlord could only have learned if she read the attachment and therefore the Tenant believes the Landlord had her forwarding address as of September 28, 2012 and the Landlord chose not to send the security deposit back to the Tenant. The Tenant said this proves the Landlord is liable for double the security deposit.

The Landlord said she could not read all of the attachment and an email is not considered formal written service of a document; therefore she believes that she received the Tenant's forwarding address in writing when she received the hearing package on January 5, 2013. The Landlord said she returned the Tenant's security deposit in full with a money order dated January 14, 2013. The Landlord said she conformed to the Act and her responsibility as a landlord and she does not owe the Tenant anything else.

Analysis

Sections 88 of the Act says - All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1)
[director's orders: delivery and service of documents];
- (j) by any other means of service prescribed in the regulations.

The Tenant said she served the Landlord her forwarding address by email which is not a recognized method of service for a forwarding address (refer to Fact sheet 119 section other documents). In some cases an Arbitrator may accept service by email if there is no dispute about receiving a document, but in situations, where there is a dispute about receiving a document, the service requirements of the Act are required. Consequently I do not accept the Tenant's service of the forwarding address to the Landlord by email. Further as the Tenant did not have any evidence to show that her forwarding address was served to the Landlord in writing before the application and Hearing Package was sent to the Landlord on January 2, 2013, I find the Landlord received the Tenant's forwarding address in writing on January 5, 2013. As the

Landlord returned the Tenant's security deposit of \$425.00 by money order dated January 14, 2013, I find the Landlord complied with the Act in regards to the return of the Tenant's security deposit. As a result I find the Tenant has not established grounds to be successful in her application for double the security deposit and I dismiss the Tenant's application without leave to reapply.

As the Tenant was unsuccessful in this matter I further order the Tenant to bear the cost of the filing fee of \$50.00 for this proceeding which the Tenant has already paid.

Conclusion

I dismiss the Tenant's application 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: February 27, 2013

Residential Tenancy Branch

