



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for the return of all their security deposit.

One of the Tenants and one of the Landlords named on the Application appeared for the hearing and provided affirmed testimony during the hearing. The Tenants submitted written evidence in advance of the hearing. The Landlord confirmed receipt of the Tenants’ Application and written evidence which had been served by registered mail pursuant to Section 89(1) (c) of the Act.

During the hearing, the Tenant testified that he had served the Landlord with a forwarding address in a written letter as required by Section 38(1) of the Act. However, the Landlord denied receipt of the Tenants’ forwarding address and submitted that the only time she saw this document was in the Tenant’s written evidence for this hearing.

The Tenant explained that they attempted to serve it to the Landlord personally who did not open her door; they then placed the letter with the forwarding address on the Landlord’s car. However, the Landlord denied receipt of this document from her car.

As a result, I determined that the Tenant failed to provide sufficient evidence that the Tenants’ forwarding address had been provided in accordance with the service requirements outlined in Section 88 of the Act. Posting a document to windscreen of a car is not a method of service allowed by the Act. Therefore, I find that until the Tenants provide the Landlord with a forwarding address in writing in accordance with the Act, and can substantiate this in a hearing, there is no requirement for the Landlord to return the Tenants’ security deposit.

In addition, the address provided by the Tenant on the Application is different to the one claimed by the Tenant to have been provided to the Landlord.

As a result, I find that it is more appropriate under these circumstances, for the Tenant to serve the Landlord with an appropriate address, where they are able to receive the return of the security deposit or a Landlord's Application to keep the Tenants' security deposit.

The Landlords are cautioned with regards to their obligation in dealing with the Tenants' security deposit in accordance with Section 38(1) and (6) of the Act.

The parties also made some submissions about whether a tenancy had been established between the parties and while I made no legal finding in relation to this, I caution the parties to the following provisions of the Act:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Landlord may require security deposit

- 17** A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

Conclusion

For the reasons set out above, I dismiss the Tenants' Application **with** leave to re-apply.

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 31, 2014

Residential Tenancy Branch

