



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

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 their security deposit and the recovery of the filing fee.

One of the Tenants appeared for the hearing and provided affirmed testimony and a written letter from the Landlords into written evidence prior to the hearing. There was no appearance for the Landlords during the 23 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the Notice of Hearing documents to the Landlords.

The Tenant testified that the Landlords were personally served with copy of the Application and the Notice of Hearing documents on August 1, 2014. In the absence of any evidence to dispute this, I find the Landlords were served with the required documents pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”).

Analysis & Conclusion

At the start of the hearing the Tenant explained that he did not have a forwarding address to give to the Landlord when the tenancy ended on June 27, 2014. He was also afraid to provide the Landlord with his personal address as he feared for his safety.

However, the Tenant was able to ascertain a postal address at which point he noted it on his Application and served a copy to the Landlords on a separate piece of paper along with the Notice of Hearing documents which he served on August 1, 2014.

However, the Tenant failed to provide a copy of the letter and did not provide any supporting evidence that the forwarding address was served to the Landlords.

Section 38(1) of the Act states that, within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it.

When a tenant makes an application for the return of a security deposit, they bear the burden of proof in establishing that Section 38(1) of the Act has been complied with **before** the landlord's obligation to deal with it under the Act is released.

In this case, I find that the Tenant has not provided sufficient evidence to satisfy me that the Landlords had been provided with a forwarding address as required by the Act. Therefore, I find that the Tenant's Application is premature.

The Tenant stated that in addition, he had provided his forwarding address to the Landlord on his Application. The Tenant also confirmed the Landlords' address on his Application.

As a result, I hereby put the Landlords on notice that they will be deemed to have received this decision five days after the date it was written and will have 15 days from that date of receipt (by March 9, 2015) to deal with the Tenant's security deposit pursuant to Section 38 of the Act. If the Landlords fail to deal with the Tenant's security deposit in accordance with the Act, the Tenant is at liberty to make a new Application for its return.

The Landlord is cautioned regarding the **doubling** penalty provided by Section 38(6) of the Act if they fail to deal with the Tenant's security deposit accordingly.

For the reasons set out above, I dismiss the Tenant's 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: February 16, 2015

Residential Tenancy Branch

