



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled to deal with a tenant's application for return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant acknowledged that she had not served the landlord with the tenants' documentary evidence; however, she stated that the documentation had been received from the landlord. I confirmed with the landlord that she was familiar with the documents the tenant had submitted to the Branch. Therefore, I was satisfied the landlord would not be prejudiced by my acceptance of the tenant's evidence and I considered the documentation during the hearing.

The landlord did not submit any documentary evidence for this proceeding.

Issue(s) to be Decided

Have the tenants established an entitlement to return of the security deposit?

Background and Evidence

The tenancy commenced February 14, 2013 and ended August 1, 2014. The tenants paid a security deposit of \$750.00 and were required to pay rent of \$1,500.00 on the 1st day of every month.

The tenant testified that a forwarding address was sent to the landlord via text message approximately one week after the tenancy ended. The tenant testified that they received a cheque from landlord in the amount of \$150.00 near the end of August 2014 but the cheque was not cashed. The tenant testified that they did not authorize the

landlord to make deductions from the security deposit in writing and the landlord did not prepare move-in and move-out inspection reports.

The landlord stated that she sent a cheque to the tenants for \$150.00 on August 20, 2014; however, the landlord was uncertain as to whether she sent the cheque to the tenants using a forwarding address she received via text message. The landlord and her husband provided conflicting testimony as to whether move-in and move-out inspection reports were prepared. The landlord testified that she received oral authorization from the male tenant to make a deduction from the security deposit.

It was clear to me after hearing from both parties that both parties are unfamiliar with their respective rights and obligations under the Act. Certain requirements with respect to completing inspection reports, administration of security deposits, and providing a forwarding address in writing, were discussed during the hearing and both parties were encouraged to contact an Information Officer with the Branch to obtain further information.

Analysis

A security deposit is held in trust for a tenant to be administered by the landlord in accordance with the Act. The Act provides that unless the landlord has been authorized to make deductions from the security deposit by the Director or the tenant, in writing, the landlord has 15 days to either refund the security deposit, or file an Application for Dispute Resolution to request authorization to make deductions from the security deposit. The 15 day time limit commences on the day the tenancy ends or the day the landlord receives the tenant's forwarding address in writing, whichever date is later.

A tenant filing an Application for Dispute Resolution seeking return of the security deposit has the burden to establish that a forwarding address had been given to the landlord in writing. Where a document is required to be given to another party, the Act requires that it be given in one of the ways provided under section 88 of the Act. Sending a text message does meet the service requirements for giving a document to another party.

Although the Act provides me authority to deem a party sufficiently served with a document even if it was not given in a manner that complies with the Act, in the absence of a copy of the text message, a copy of the envelope containing the partial refund cheque, or confirmation that a forwarding address was received by the landlord in writing, I decline to deem the landlord sufficiently served with the tenants' forwarding address.

Having been unsatisfied that the tenants met their burden to prove the forwarding address was given to the landlord in writing, I found this Application to be premature and I dismissed this Application with leave to reapply.

It is important to note that I made no finding or order that service of the tenant's Application fulfilled the tenants' requirement to give a forwarding address to the landlord in writing. Rather, the parties were informed during the hearing that the tenants will have to serve the landlord with a document (other than the Application for Dispute Resolution) to provide the landlord with their forwarding address and trigger the landlord to take action to dispose of the security deposit in a manner that complies with the Act.

Conclusion

The tenants' application was found to be premature and was dismissed with 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: April 01, 2015

Residential Tenancy Branch

