



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This was a hearing with respect to the tenant's application for the return of a security deposit. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not attend. The tenant submitted a photograph of an envelope that she testified was the registered mail sent to the landlord enclosing the application for dispute resolution and Notice of Hearing. The mail was sent on October 24, 2014 and it was addressed to the landlord at the address of the rental unit. The tenant did not provide a copy of the tenancy agreement. She testified at the hearing that the landlord's address for service stated on the tenancy agreement was the address of the rental unit, even though the landlord does not live at that address.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? Is the tenant entitled to a monetary award in the amount of double the security deposit?

Background and Evidence

The rental unit is a suite in a house. According to the tenant there was an initial tenancy agreement with respect to the downstairs suite in the rental property. Later another tenancy agreement was made with respect to the upstairs suite. The tenant said she paid a \$600.00 security deposit on July 11, 2014. She moved out of the rental unit on September 27, 2014. Although the tenant stated in the material supplied, that she has enclosed a copy of the lease, the tenant did not submit a copy of the tenancy agreement as evidence.

In her submission the tenant said that:

- a. At the landlord's request, we have done all communications and financial transactions electronically, including payment of all rents and deposits.
- b. It was expected that the landlord forward my deposit to my electronic address.
- c. She claims that she did not repay because she did not have my new home address – however, as everything was done electronically, there was absolutely no need for her to have my home address.

The tenant said that she provided the landlord with a forwarding address in an e-mail dated October 18, 2014. The tenant's application for dispute resolution was also filed on October 18, 2014.

Analysis

Section 89 of the *Residential Tenancy Act* provides that a landlord may be served with an application for dispute resolution by registered mail sent to the address at which the landlord resides or to the address where the landlord carries on business as a landlord. The tenant sent documents landlord at the address of the rental unit. The landlord does not reside at that address. I do not have any document to show that the landlord carries on business from that address. I therefore find that the tenant has failed to prove that the landlord has been properly served with the application and Notice of Hearing. The parties

Section 38 of the *Residential Tenancy Act* provides that a landlord's obligation to return a deposit or to make a claim against it, arises 15 days after the later of the day that the tenancy ends, or the date that the landlord receives the tenant's forwarding address in writing. The writing that is expected is a document that is physically delivered to the landlord. In this case the tenant has relied on an e-mail communication and it was apparently sent the same day that the tenant submitted her application. Even if I regard the forwarding address as properly given by e-mail, the application itself was brought prematurely since it was filed the same day that the e-mail was sent. The tenant said that the parties agreed to conduct their business electronically, but the *Residential Tenancy Act* provides enforceable rights to landlords and tenants based on compliance with the provisions of the legislation and the parties are not free to substitute their own arrangements and then seek to enforce rights under the Act that are predicated upon the performance prescribed by the statute.

Conclusion

I find that the tenant has not shown that the landlord was properly served with the application and Notice of Hearing. The application itself was filed prematurely and it is 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 24, 2015

Residential Tenancy Branch

