



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application brought by the tenant requesting a monetary order for \$1270.00 and requesting recovery of the \$50.00 filing fee

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on April 20, 2015; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The applicant testified that he paid a security deposit of \$1225.00 at the beginning of the tenancy and the end of the tenancy he agreed to allow the landlord to keep \$150.00 of the deposit and the remaining \$1075.00 was to be returned.

The applicant further testified that the landlord only returned \$880.00, through and E-transfer.

The applicant stated that although he has given the landlord a forwarding address by e-mail the landlord has still failed to return the remainder of his security deposit.

The applicant is therefore requesting an order for double the \$1075.00 for a total of \$2150.00, less the \$880.00 that has already been returned for a balance of \$1270.00.

The applicant is also requesting an order for recovery of his \$50.00 filing fee.

Analysis

Section 39 of the Residential Tenancy Act states:

- 39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
 - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Therefore the landlord is not required to return the security deposit until he receives a forwarding address in writing.

The tenant has argued that he gave a forwarding address in writing by e-mail, however section 88 of the Residential Tenancy Act states:

88 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.

Nowhere in section 88 does it allow service by e-mail, and therefore since the landlord did not appear at today's hearing to give any testimony as to whether or not he received the e-mail, the landlord is not considered to have been served with a forwarding address in writing.

Therefore, since the landlord is not considered to have received a forwarding address in writing, at this time, the landlord is not required to return the security deposit, and this application will be dismissed with leave to reapply..

Before reapplying for dispute resolution the tenant must serve the landlord a forwarding address in writing in one of the ways allowed in section 88 of the Residential Tenancy Act. If, after properly serving a forwarding address in writing, the landlord still fails to return the remainder of the security deposit within the 15 day time limit set out under section 38 of the act, the tenant can file a claim at that time.

Conclusion

This application is dismissed in full, 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: September 22, 2015

Residential Tenancy Branch

