



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act, (the “Act”), for the return of their security deposit and to recover the filing fee from the landlord.

The tenants attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenants testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on July 17, 2015,, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

Preliminary matter

In this case, the tenants write in their details of dispute that they seek compensation for loss of quiet enjoyment. However, the tenants have not indicated in their application that they seek any monetary compensation for damage or loss and no amount was claimed.

Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings that would include the amount claimed. Therefore, I dismiss this portion with leave to reapply.

Issue to be Decided

Are the tenants entitled to the return of the security deposit?

Background and Evidence

The tenancy began July 2011. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$575.00 was paid by the tenants. The tenants vacated on July 11, 2015.

The tenants testified that they did not provide the landlord with their forwarding address in writing prior to making their application, which was filed on July 17, 2015.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Although I accept the undisputed evidence of the tenants, that landlord was sent the tenant's forwarding address in the tenant's application filed July 17, 2015; however, it was the tenants' responsibility to provide the landlord written notice of the forwarding address in a separate, earlier document. As the other party may be led to believe that because the matter is already scheduled to be heard, that it is too late for them to file a claim against the deposit.

Therefore, I find the tenants' application was filed prematurely. The tenants' application is dismissed with leave to reapply.

The landlord is cautioned that they must comply with section 38 of the Act, once they receive the tenants' request for return of the security deposit.

Conclusion

The tenant's application 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: December 07, 2015

Residential Tenancy Branch

