Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OLC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on July 11, 2015. The Tenants filed seeking the return of double their security deposit, to obtain an Order to have the Landlord comply with the *Act,* Regulation, or tenancy agreement; and to recover the cost of his filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by the Tenant, B.P. The Tenant provided affirmed testimony that he would be representing both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

No one was in attendance on behalf of the Landlord. The Tenant provided affirmed testimony that the Landlord was served notice of this application and this hearing by registered mail on July 22, 2015. A Canada Post receipt was submitted in the Tenant's evidence.

The Tenant testified that the registered mail was returned unclaimed so they arranged to have the package personally delivered to the Landlord's home. In August the package was personally handed to the Landlord's wife at their residence.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Tenant, I find that the Landlord was sufficiently served notice of this proceeding both by deemed service and by personal service in accordance with Sections 89 and 90 of the *Act.* The hearing continued to hear the undisputed evidence of the Tenants.

Issue(s) to be Decided

Have the Tenants proven entitlement to the return of double their security deposit?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on October 1, 2013 and switched to a month to month tenancy after one year. Rent of $1,500.00 was payable on the first of each month and on or before October 1, 2013 the Tenants paid $750.00 as the security deposit.

No move in or move out inspection report forms were completed by the Landlord in the presence of the Tenants.

The Tenant testified that their tenancy ended May 31, 2015 when they vacated the property. The Tenant confirmed that they did not serve the Landlord with their forwarding address in writing prior to filing their application for Dispute Resolution.

The Tenant submitted that after they finished cleaning up the rental unit they requested the Landlord return their security deposit. The Landlord responded by text message saying he would drop the Tenant's security deposit off at the medical clinic where the male Tenant was employed. The Tenant stated that the Landlord failed to return their deposit.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenant.

Section 38(1) of the *Act* stipulates that 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 either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

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

Section 44(1)(d) of the *Act* stipulates that a tenancy ends on the date the tenant vacates or abandons the rental unit.

In this case the Tenants vacated the property on May 31, 2015; therefore the tenancy ended on **May 31, 2015**, pursuant to section 44(1)(d) of the *Act.*

By his own submission the Tenant confirmed that they did not serve the Landlord with their forwarding address in writing. Therefore, I conclude that at the time the Tenants' application for Dispute Resolution was filed the Landlord was under no obligation to return the security deposit, as they had not yet been served with the Tenants' forwarding address in writing as required by section 38 of the *Act*. Accordingly, I conclude that this application was premature.

I therefore dismiss this application with leave to re-apply. The Tenants are required to properly serve the Landlords with their forwarding address, in writing, in accordance with section 38 of the *Act.* Failure to do so within one year of the tenancy ending would result in the Landlord being able to keep the deposit pursuant to section 39 of 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: January 13, 2016

Residential Tenancy Branch