



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, CNR, CNC, FF

Introduction:

A hearing was held on September 22, 2015 to consider the merits of an Application for Dispute Resolution filed by the Tenant. The Tenant attended that hearing but the Landlord did not.

In a decision, dated October 07, 2015, an Arbitrator with the Residential Tenancy Branch granted the Tenant a monetary Order for \$1,450.00, which represented double his security deposit and the cost of filing the Application for Dispute Resolution.

The Landlord filed an Application for Review Consideration and an Arbitrator with the Residential Tenancy Branch determined that a new hearing should be held.

A new hearing was convened on January 19, 2016 to consider the merit of the Tenant's original Application for Dispute Resolution in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent; to cancel a Notice to End Tenancy for Cause; for the return of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. This hearing was adjourned for reasons outlined in my interim decision of January 19, 2016.

At the hearing on January 19, 2016 the Agent for the Landlord stated that he personally delivered the Application for Review Consideration, the review consideration decision, and the notice of this hearing to the Tenant's service address, although he cannot recall the date of service. He stated that the Landlord had received the Tenant's service address when the Landlord received the Application for Dispute Resolution related to these proceedings.

At the hearing on January 19, 2016 the Tenant stated that a copy of the review consideration decision and notice of this hearing were mailed to him by the Residential Tenancy Branch. He stated that he did not receive the Application for Review Consideration, the review consideration decision, and the notice of this hearing that was allegedly served to his service address by the Landlord.

In my interim decision of January 19, 2016 the Landlord was directed to serve the Tenant with a copy of the Application for Review Consideration, the review consideration decision, and all evidence the Landlord submitted with the Application for Review Consideration. The Agent for the Landlord stated that he was unable to serve the Tenant with another copy of the Application for Review Consideration or the review consideration decision because he no longer had a copy of those documents.

As the Landlord has failed to establish that documents relating to the Application for Review Consideration were served to the Tenant, those documents were not considered when this decision was rendered.

At the reconvened hearing on March 10, 2016 the Tenant stated that he personally delivered a copy of the original Application for Dispute Resolution to the Landlord's service address on January 25, 2016. The Landlord acknowledged receipt of this document.

The Tenant stated that his application to cancel a Notice to End Tenancy for Unpaid Rent and to cancel a Notice to End Tenancy for Cause is withdrawn, as he has vacated the rental unit.

The parties present at the hearings were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to the return of security deposit?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began on April 01, 2013
- a security deposit of \$700.00 was paid;
- a condition inspection report was not completed at the start of the tenancy;
- a condition inspection report was not completed at the end of the tenancy;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security deposit; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that the tenancy ended on July 26, 2015. The Agent for the Landlord stated that he was not working for the Landlord when this tenancy ended but he understands the tenancy ended sometime near the end of July of 2015.

The Tenant stated that on July 26, 2015 he handed a letter to an agent for the Landlord, in which he provided a forwarding address. He stated that she refused to accept the letter that was handed to her. The Agent for the Landlord stated that he has no knowledge of this interaction.

The Tenant stated that on August 13, 2015 he personally delivered a copy of the letter the Landlord had refused to accept on July 26, 2015 to the Landlord's service address with the Application for Dispute Resolution.

The Agent for the Landlord stated that on August 17, 2015 the Landlord located a package of documents from the Tenant that was delivered to her service address on August 17, 2015. He stated that this package did not contain a copy of the Application for Dispute Resolution but it did contain a document which contained an incomplete forwarding address.

The Agent for the Landlord stated that the forwarding address provided a street address and a street name, but it did not contain the name of the city or a postal code. The Tenant stated that he did not have a copy of that document with him at the time of the hearing but he is certain that the document provided a full forwarding address, including the city and the postal code.

As the parties do not agree on the content of the document which contained the Tenant's forwarding address, I provided both parties with the opportunity to submit a copy of the document to the Residential Tenancy Branch. The parties were advised that they had until March 18, 2016 to submit that document and that a decision would be rendered after that date. This direction was provided in accordance with section 3.19 of the Residential Tenancy Branch Rules of Procedure.

The Tenant stated that he does not know if he can still locate a copy of that document but he will submit it if he is able to locate the document.

On March 11, 2016 the Landlord submitted a document to the Residential Tenancy Branch. This appears to be a letter from the Tenant, in which he provides a forwarding address that does not include the name of the city or a postal code. The Tenant did not submit any evidence to the Residential Tenancy Branch after the hearing on March 10, 2016.

The Agent for the Landlord stated that the Landlord did not receive the full forwarding address for the Tenant until the Tenant served the Landlord with a copy of the Tenant's Application for Dispute Resolution in January of 2016.

Analysis:

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that this tenancy ended on July 26, 2015.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant attempted to serve an agent for the Landlord with a document which contained a forwarding address, which the agent refused to accept.

On the basis of the undisputed evidence I find that in August of 2015 the Tenant delivered a copy of the document he had attempted to serve to the Landlord on July 26, 2015.

On the basis of the testimony of the Agent for the Landlord and the document submitted to the Residential Tenancy Branch by the Landlord on March 11, 2016, I find that the Tenant did not provide the Landlord with a complete forwarding address on the document that was served to the Landlord in August of 2015 or on the document the Landlord refused to accept on July 26, 2015. I specifically note that the forwarding address did not include a name of a city or a postal code and that it would have been difficult, if not impossible, for the Landlord to return the security deposit with the information provided.

On the basis of the undisputed testimony, I find that the Landlord did receive a complete forwarding address for the Tenant when the Landlord received the Application for Dispute Resolution. On the basis of the testimony of the Agent for the Landlord, I find that the Application for Dispute Resolution was received on January 25, 2016.

I find that the Tenant has submitted insufficient evidence to establish that he personally delivered the Application for Dispute Resolution to the Landlord's service address on August 13, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that it was delivered on August 13, 2015 or that refutes the Agent for the Landlord's testimony that it was not received until January of 2016.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As the Tenant has submitted insufficient evidence to establish that he provided the Landlord with a complete address, in writing, prior to filing his Application for Dispute Resolution, I find that the Tenant filed his Application for Dispute Resolution prematurely. As the Tenant's Application for Dispute Resolution was filed prematurely, I dismiss the entire Application for Dispute Resolution, with leave to reapply.

I did not direct the Landlord to return the Tenant's security deposit at the hearing as I was of the understanding that the Landlord had already filed an Application for Dispute Resolution seeking to retain the security deposit. After reviewing Residential Tenancy Branch records, it appears I may have misunderstood the Agent for the Landlord in this regard.

As the Tenant had not served a complete forwarding address prior to filing the Application for Dispute Resolution, the Tenant remains obligated to serve the Landlord with a complete forwarding address, in writing. Upon receiving this forwarding address the Landlord is obligated to comply with section 38 of the *Act*.

Conclusion:

The Tenant's Application for Dispute Resolution has been dismissed, with leave to reapply. This decision replaces the original decision of October 07, 2015.

As I have dismissed the Tenant's Application for Dispute Resolution and have not concluded that the Tenant is entitled to a monetary Order, the monetary Order for \$1,450.00, dated October 07, 2015, is set aside.

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: March 21, 2016

Residential Tenancy Branch