



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Okinshaw water Company
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNSD, O

Introduction

This is an application brought by the tenant requesting a Monetary Order in the amount of \$2400.00 and 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 September 25, 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.

The applicant's testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicant has established a claim for return of double his security deposit, for a total of \$2400.00.

Background and Evidence

At the beginning of the hearing the applicant testified that he had served the landlord with a forwarding address in writing by e-mail on August 26, 2015 however he had not served by any other method.

Analysis

The tenant has applied for the return of double his security deposit; however the tenant served his forwarding address to the landlord by e-mail, which is not a method of service that is recognized by the Residential Tenancy Act.

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.

Therefore at this point, the tenant has not given the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Sections 38 and 39 of the Residential Tenancy Act state:

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.

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 at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and this application is premature.

I therefore dismiss this claim with leave to re-apply.

Before applying for dispute resolution again, the applicant must serve the landlord with a forwarding address in writing in a method recognized by the Residential Tenancy Act and wait the applicable 15 day period.

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: April 04, 2016

Residential Tenancy Branch

