



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of his security deposit. The Tenant appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Landlord during the ten minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service documents for this hearing by the Tenant.

The Tenant testified that the Landlord was served with a copy of the Application and the Notice of Hearing documents on March 21, 2016 by registered mail to the address documented on the tenancy agreement. The Tenant provided a copy of the Canada Post tracking number to verify this method of service but testified that this had been returned back to him as unclaimed.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find the Landlord was deemed served with the required documents on March 26, 2016 pursuant to the Act.

Issue(s) to be Decided

Has the Tenant complied with the Act in getting his security deposit back?

Background and Evidence

The Tenant testified that this tenancy started on December 16, 2014 and ended on February 1, 2016. The Tenant testified that a tenancy agreement was signed and he paid a \$237.50 security deposit. The Tenant testified that he met with the Landlord on

February 17, 2016 who provided him with a cheque for an agreed return amount of \$217.50. However, that cheque bounced and the Tenant did not get the agreed amount back. When the Tenant was asked whether he had provided the Landlord with a forwarding address in writing he stated that he did this by email but could not produce evidence of this or whether the Landlord had responded to it.

Analysis

Section 38(1) of the Act states 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 repay the security deposit or make an Application to claim against it. If the landlord fails to do so, Section 38(6) of the Act provides for a doubling penalty which the landlord must pay to the tenant.

Section 88 of the Act provides for the methods of service for a document under the Act. Serving formal documents, such as a forwarding address at the end of a tenancy, by email is not recognized as a method of service under the Act, unless a party is able to provide sufficient evidence that the receiver of the email acknowledged and responded to the email and can therefore satisfy the service requirements of the Act. In this case, I am not satisfied by the Tenant's oral evidence alone that the Landlord has been served with the Tenant's forwarding address in writing pursuant to the requirements of Section 38(1) of the Act. Therefore, in this respect, I find the Tenant's Application is premature as he must comply with the Act in providing the Landlord with a forwarding address.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application but provide leave to re-apply after the Tenant provides the Landlord with his forwarding address.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 27, 2016

Residential Tenancy Branch