



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 in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for the return of their security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 29, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord at the service address noted on the Application, via registered mail. The Tenant cited a Canada Post tracking number that corroborates this statement. The Tenant stated that the package was returned to his as “unclaimed”.

In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Background and Evidence:

The Tenant stated that:

- the tenancy began on October 31, 2014;
- a security deposit of \$500.00 was paid;
- a pet damage deposit of \$500.00 was paid
- the tenancy ended on October 31, 2015;
- his co-tenant told him that he sent the Landlord a forwarding address, via text message, on October 29, 2015;
- he did not see the text message that was sent by his co-tenant;
- he does not know if the Landlord received the text message that was sent on October 29, 2015;

- the Tenants did not authorize the Landlord to retain any portion of the security deposit;
- the Landlord did not return any portion of the security/pet damage deposits; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security/pet damage deposits.

Analysis:

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.

In adjudicating this matter I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of "written" as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Act* specifies that documents, other than documents referred to in section 89 of the *Act*, must be served by one of the following methods:

- (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.

Service by text message or email is not one of methods of serving documents authorized by section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. When a landlord acknowledges receiving a forwarding address via text message or a tenant submits proof that a landlord received that text message, I am apt to conclude that a landlord has been sufficiently served with the forwarding address pursuant to section 71(2)(c) of the *Act*.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord received the forwarding address that was allegedly sent to the Landlord by the co-tenant, via text message. In reaching this conclusion I was influenced by:

- the Tenant's testimony that he did not see the text message that was allegedly sent by his co-tenant;
- the Tenant's knowledge that the text message was sent is based solely on information provided to him by his co-tenant;
- the co-tenant provided no evidence regarding the text message;
- a copy of the text message was not provided in evidence; and
- he does not know if the Landlord received the text message allegedly sent by the co-tenant.

As there is insufficient evidence to conclude that the forwarding address was sufficiently served by to the Landlord by text message, I find that the Tenants have failed to establish that the Landlord was served with a forwarding address, in writing. As the Tenants have failed to establish that they had provided the Landlord with a forwarding address, in writing, prior to filing their Application for Dispute Resolution, I find that the application to recover the security deposit was filed prematurely.

As the Tenants filed the Application for Dispute Resolution prematurely, I dismiss the Tenants' application to recover the security deposit, with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution seeking to recover the security deposit after they provide the Landlord with their forwarding address in writing in a manner that complies with section 88 of the *Act*.

I note that even if the Landlord had accepted service of the Application for Dispute Resolution that was mailed to him on January 29, 2016, I would not have concluded that the Landlord received the Tenants' forwarding address at that time for the purposes of section 38(1) of the *Act*. I find that the Application for Dispute Resolution simply served to inform the Landlord that there would be a hearing into this matter and would not constitute service of a forwarding address for the purposes of section 38(1) of the *Act*. This is based on my belief that it would be reasonable for a landlord to wait

until the dispute resolution proceeding was completed before determining what should happen with the security deposit.

The Tenants are cautioned that section 39 of the *Act* authorizes a landlord to retain a security deposit if a tenant does not provide a forwarding address, in writing, within one year after the end of the tenancy.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution is dismissed in its entirety.

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: September 12, 2016

Residential Tenancy Branch