



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction and Conclusion

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord's representative, D.F., appeared at the hearing. D.F. gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

D.F. testified that the tenancy ended on February 16, 2016. She further stated that the Tenant refused to sign the move out condition inspection report and "Charge Analysis".

D.F. stated that the Tenant provided written notice of their forwarding address, and it was to this address that the Landlord attempted to serve the Tenant with the Application for Dispute Resolution and Notice of Hearing. She confirmed these documents were sent by registered mail on February 23, 2016. D.F. provided a copy of the receipt for mailing as well as the registered mail tracking number which is reproduced on the cover page of this my Decision. She further testified that she received an email from Canada Post on March 22, 2016 advising her that the forwarding address provided by the Tenant was incomplete such that the package could not be delivered.

While refusal or failure to retrieve registered mail does not negate service, in this case I find that the incomplete mailing address provided by the Tenant prevented service. Accordingly, I am unable to find that the Tenant was served notice of this hearing in accordance with the *Residential Tenancy Act*, and therefore I am unable to consider the Landlord's claim.

However, and as discussed during the hearing, I note that the Tenant failed to provide their forwarding address as required by the *Residential Tenancy Act*. Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

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.

The Tenant is required to provide their forwarding address to facilitate the Landlord's application pursuant to section 38. As the Tenant provided an incomplete address, the Landlord's application was premature.

The Landlord was reminded during the hearing that section 39 permits the Landlord to retain the Tenant's security deposit in the event the Tenant does not provide their forwarding address in writing within a year of the end of the tenancy; for greater clarity I reproduce that section

Landlord may retain deposits if forwarding address not provided

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.

Conclusion

The Landlord was unable to serve the Tenant with notice of the hearing as the Tenant provided an incomplete forwarding address. The Landlord's application is dismissed with leave to reapply in the event the Tenant provides a forwarding address; should the Tenant not provide such an address within a year of the tenancy ending the Landlord

will be entitled to retain the security deposit pursuant to section 39 of the *Residential Tenancy Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 06, 2016

Residential Tenancy Branch

