



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on July 20, 2016. The Tenant filed seeking a monetary order for the return of double her security and pet deposits and recover of her filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord requested that the application be amended to show her legal first name. Neither party raised issues or concerns with amending the application. Accordingly, the style of cause has been amended to display the Landlord's legal name, pursuant to section 64(3)(c) of the Act.

The Landlord confirmed receipt of the Tenant's application and notice of hearing documents in the summer of 2016. She stated she received the Tenant's evidence, which included documents and 5 photographs, on January 10, 2017 via registered mail. She asserted that evidence was one day late.

The Tenant testified she served the Landlord the exact same evidence and 15 photographs she had submitted to the Residential Tenancy Branch (RTB). The Tenant denied receiving the Landlord's evidence submission.

The Landlord testified she served the Tenant with copies of the exact same evidence she served the RTB. I heard the Landlord state she served her evidence to the Tenant via Express Post and the tracking information, which was provided in the Landlord's oral submissions, indicated the package had been delivered.

Issue(s) to be Decided

Did the Tenant file her application prematurely?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which commenced on November 1, 2015 and switched to a month to month tenancy after October 31, 2015. Rent of \$1,075.00 was payable on the first of each month. On October 9, 2015 the Tenant paid \$537.50 as the security deposit and \$268.75 as the pet deposit.

I heard the Tenant stated she vacated the rental unit April 2, 2016. The Tenant said she did not provide the Landlord her forwarding address in writing; rather, she sent her a text message with an address.

After informing the Tenant her application would be considered premature because she had not served her forwarding address in writing, the parties were given the opportunity to try to settle these matters. The parties were too far apart and chose to proceed with filing additional applications for dispute resolution to have their individual claims resolved at a later date.

The Landlord stated that she wished to file her application for Dispute Resolution Immediately following this hearing. I then heard the Landlord confirm she received the Tenant's forwarding address, in writing, as listed on the Tenant's application for Dispute Resolution, as of this hearing date of January 23, 2017.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 38(1) of the *Act* stipulates that if within **15 days** after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's **forwarding address in writing**, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit [my emphasis added with bold text].

As indicated above, the Tenant had not served the Landlord with her forwarding address in writing prior to filing her application for Dispute Resolution. Accordingly, I found the application to have been filed prematurely, and it was dismissed with leave to reapply.

Conclusion

The Tenant was found to have filed her application prematurely and it was dismissed, with leave to reapply.

This decision is final, legally binding, 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: January 23, 2017

Residential Tenancy Branch