



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER HORIZON REALTY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and the tenants provided evidence that they had served the property manager with the Application for Dispute Resolution by registered mail and by mail with their forwarding address. The property manager agreed he had received them but stated he is not the landlord and has no authority to act for them as his contract was discontinued. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

Preliminary Issue:

Is the tenant's application valid?

Analysis:

I find this is an unfortunate situation. The tenants entered into a tenancy agreement January 20, 2014 with two named landlords and the respondent named as agent. They paid a pet damage and security deposit each in the amount of \$1500 and seek to recover them. The agent collected rent from them and did their move-in report. However, the agent sent an email informing them that as of March 15, 2015 he would no longer be their property manager. The home was in foreclosure. The tenants vacated March 4, 2015 and provided their forwarding address by mail on May 25, 2015 to the property manager. The property manager said they are seeking reimbursement from the wrong party. He is not the landlord and they knew this from their tenancy agreement. They had tried to find out the landlord's address but the property manager no longer had a record of this. The property manager provided a copy of the management agreement which stated all security and pet damage deposits were immediately forwarded to the landlord owners. He said he knew it was a difficult situation but it is up to the tenants to claim from the right parties who are the landlords.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that they paid \$1300 security deposit and \$1300 pet damage deposit but find they did not serve the landlords with either their forwarding address or the application. I find the weight of the evidence is that the agent has not acted for the owner/landlords since 2015 and the tenants were informed of this. I find the landlord received the deposits from the agent according to contract.

I find the tenants likely have a valid claim against the landlords under section 38 of the Act although they may now be out of the legislated time limit of two years to claim their refunds. I find also that section 39 of the Act may preclude their claim as it provides the forwarding address must be provided to the landlord within one year after the end of the tenancy or the landlord may keep the deposits. I find this is an unfortunate situation where the tenant may have lost the right to the return of the deposits because they did not obtain the address of the landlord so they could serve them with a forwarding address and the application.

Conclusion:

I dismiss the application of the tenant and find them not entitled to recover the filing fee due to their lack of success. I give them leave to reapply within the legislated time limits.

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: March 08, 2017

Residential Tenancy Branch