



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested return of double his security deposit.

The hearing was conducted by teleconference on January 31, 2017 and March 6, 2017. Only the Tenant appeared at the hearing. At the first hearing on January 31, 2017 I was not satisfied the Landlord had been served in accordance with the *Residential Tenancy Act* and I adjourned the hearing to March 6, 2017.

At the hearing on March 6, 2017, the Tenant gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me. The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on February 2, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of February 7, 2017 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenant's submissions and or

arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to return of his security deposit?

Background and Evidence

The Tenant testified that the tenancy began August or September 2015; he was not able to be more specific as to the date. He stated that monthly rent was payable in the amount of \$600.00 and he Tenant paid a security deposit in the amount of \$300.00 on September 21, 2015; a copy of the cheque for this deposit was provided in evidence.

The Tenant testified that the Landlord did not perform an incoming condition inspection report nor did the Landlord perform a move out condition inspection report.

The Tenant testified that he provided the Landlord and his nephew, M.S., with his forwarding address. He stated that M.S. had been collecting the rent on the Landlord's behalf and signed the rent receipts provided to the Tenant. The Tenant confirmed that the forwarding address he provides was his friend J.K.'s address and that it was sent by text message on the date that he moved out. He stated that the Landlord confirmed his security deposit would be sent out in a "few days" and asked that the Tenant send a text with the address to M.S. The Tenant further testified that he then phoned M.S. who confirmed he had received the text message with the Tenant's forwarding address.

The Tenant did not provide a copy of this text message in evidence. As well, the Tenant was not able to testify as to the date the tenancy ended nor was he able to provide evidence as to the date he provided his forwarding address by text message.

Analysis

The return of a security deposit is dealt with in section 38 of the *Residential Tenancy Act*. Section 38(1) of the *Act* provides that a Landlord has 15 days after the later of the date the tenancy ends or the date the Landlord receives the Tenant's forwarding address in writing.

In the case before me, the Tenant was unable to testify as to the date the tenancy ended and the date he claims to have provided his forwarding address in writing. As such, I am unable to determine when the 15 days (provided for in section 38(1)) are to begin.

As well, the Tenant testified that his friend, J.K., sent a text message to the Landlord's nephew's cellular phone. The Tenant was not able to provide a copy of this text message as he stated J.K. had a different phone now. I find that this does not satisfy the requirement of section 38(1)(b).

The Tenant's claim for return of double his security deposit is dismissed with leave to reapply.

Conclusion

The Tenant failed to prove he provided the Landlord with his forwarding address in writing as required by section 38(1)(b). The Tenant's claim is dismissed with leave to reapply.

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 6, 2017

Residential Tenancy Branch