



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 by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") for the return of the security and pet damage deposit, and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing and provided affirmed testimony. However, there was no appearance for the Landlord during the 15 minute hearing. Therefore, I turned my mind to the service of the Hearing Package by the Tenant.

The Tenant testified that the Landlord was served with the Hearing Package by express post on September 19, 2017 which required a signature. The documents were sent to the service address of the Landlord documented on the tenancy agreement. The Tenant provided a copy of the Canada Post tracking number into evidence to verify this method of service. The Tenant testified that it was returned back to her as unclaimed.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenant, I find the Landlord was deemed served with the required documents on September 24, 2016 pursuant to the Act.

Preliminary Issues

The Tenant testified that she had served the Landlord with her forwarding address by text message and was unable to confirm if the Landlord had responded to the message or had received it. However, the Act does not allow the service of formal documents, such as a notice to end tenancy or a forwarding address, be served by text message without evidence of it had been received by the other party.

Analysis and Conclusion

Before a tenant's Application for the return of a security deposit can be determined, the tenant must prove that they have complied with Section 38(1) of the Act in giving proper

notice to the landlord of the forwarding address in writing. It is only when the tenant has completed this requirement does this trigger the landlord's legal requirement to act in dealing with the tenant's deposits.

In this case, as the Tenant failed to provide sufficient evidence that she had complied with Section 38(1) of the Act, I find the Application was premature and I declined to deal with it. However, I provide leave for the Tenant to re-apply after she has satisfied the requirements of the Act in relation to the service of her forwarding address which has since changed from the time the Application was filed.

If the Tenant proceeds with making another Application, the Tenant will need to prove that she has served the Landlord with her forwarding address in writing within one year after the tenancy finished pursuant to Section 39 of the Act.

I have made no legal findings of fact or law with respect to the merits of this Application and this does not extend any applicable time limits under the Act.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 16, 2017

Residential Tenancy Branch