



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and the tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and the landlord agreed they had received it. The tenant said they served their forwarding address by email. I find sections 88 and 89 of the Act do not provide for this method of service. Residential Policy Guideline 12 states "The Legislation provides a number of service methods which may be used where a landlord or tenant is serving documents which are not considered to be special documents. These documents may include, but are not limited to notices of rent increase, notices to enter, notices terminating or restricting services, copies of tenancy agreements, condition inspection reports, requests for repairs or notice of a tenant's forwarding address in writing.

Failure to serve documents in a way recognized by the Legislation may result in the director determining that the party was not properly served with the document.

I find the landlord was not properly served with the tenant's forwarding address pursuant to sections 88 and 89 of the Act for the purposes of this hearing. 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.

Issue(s) to be Decided:

Has the landlord been duly served with the forwarding address in writing? Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said they had paid a security deposit of \$750 on June 25, 2015 and agreed to rent the unit for \$1500 a month. The tenant vacated the unit on October 1, 2016 and provided their forwarding address by email on October 4, 2016. The landlord agreed these facts were correct but said the tenants had

left a lot of furniture and garbage in the unit. The tenant's deposit has never been returned and they gave no permission to retain any of it.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

The Residential Tenancy Act provides:

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.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As discussed with the parties in the hearing, I find the tenant's Application must be dismissed as they did not serve their forwarding address in writing in a way authorized by the legislation. An attempt was made to settle the matter but the parties declined. The tenants confirmed that the address on their Application is their forwarding address and requested the landlord use this to return their deposit.

As the tenant has already waited a significant time since filing their Application on October 10, 2016, **I confirmed this forwarding address with the landlord and gave the landlord 15 days to April 27, 2017 to comply with section 38 of the Act** and either return the deposit to the address on the Application or file their own Application to claim against it.

Conclusion:

I dismiss the Application of the tenant due to insufficient service of their forwarding address. I give them leave to reapply after April 27, 2017.

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: April 11, 2017

Residential Tenancy Branch

