



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") made on November 3, 2016. The Tenant applied for the return of her security deposit, and to recover the filing fee from the Landlords.

The Landlords and the Tenant appeared for the hearing and provided affirmed testimony. The hearing process was explained. The Landlord confirmed receipt of the Tenant's Application by registered mail at the start of November 2016. The parties confirmed that apart from the signed tenancy agreement, no other documentary evidence was provided for this hearing.

Issue(s) to be Decided

Has the Tenant served the Landlords with a forwarding address pursuant to the *Residential Tenancy Act* (the "Act")?

Background and Evidence

The male Landlord testified that this tenancy started on January 1, 2015 for a fixed term of one year which was intended to continue on a month to month basis thereafter. Rent was payable by the Tenant in the amount of \$1,000.00 on the first day of each month. The Tenant paid the Landlords a security deposit of \$500.00 on December 16, 2014 which they still retain.

The male Landlord testified that the Tenant abandoned the rental unit on or about the last week of February 2015 without giving any written notice for ending the tenancy or providing a forwarding address.

The Tenant testified that she ended the tenancy by giving written notice to the Landlord in January 2015 to end the tenancy for the end of February 2015. The Tenant testified that after the tenancy ended she provided the Landlords with a forwarding address in writing in May 2015 and in November 2015 by registered mail.

The Landlord denied they were ever served with the Tenant's forwarding address. The Tenant was given an opportunity to find her Canada Post tracking numbers to verify this method of service during the hearing. However, after the Tenant spent some time searching for this evidence, she was not able to recover it. The male Landlord stated that the Canada Post evidence the Tenant was looking for was not to do with her forwarding address but related to the service of a previous application the Tenant had made which had been dismissed. The Landlord stated that in this hearing he wanted to claim for damage caused by the Tenant and breakage of the fixed term tenancy.

Analysis

Sections 38 (1) and 39 of the Act states:

- 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.
- 39** *Despite any other provision of this Act, if a tenant does not give a landlord a*
forwarding address in writing within one year after the end of the tenancy,
(a) the landlord may keep the security deposit or the pet damage deposit, or both,
and
(b) the right of the tenant to the return of the security deposit or pet damage
deposit is extinguished.

[Reproduced as written]

In this case, if the Tenant had served the Landlords with her forwarding address in writing, this would have then triggered the Landlords' requirement to deal properly in returning the Tenant's security deposit. Therefore, I must first determine if the Tenant has satisfied me that the Landlords had been served with her forwarding address in writing.

In this respect, the Tenant relied on her oral evidence regarding service of her forwarding address in May and November 2015. This evidence was disputed by the Landlords. Therefore, in the absence of any supporting or corroborative evidence, such as a copy of the letter containing the Tenant's forwarding address and the Canada Post evidence showing the Landlord had received and signed for the documents, I am unable to conclude that the Tenant has complied with Section 38(1) of the Act.

Furthermore, I find that it would be an inconsistent application of the law to conclude that the Tenant had provided the Landlord with a forwarding address in writing if the Tenant provided the address when the Landlords were served with the Tenant's previous Application. I find the legislation contemplates that the forwarding address be provided, in writing, **prior** to a Tenant filing an Application. I find it would be unfair to the Landlords to conclude differently, as the Landlords may conclude that it is too late to make a claim against the security deposit because the matter is already scheduled to be adjudicated.

Accordingly, I continue to find that as the tenancy terminated at the end of February 2015, the Tenant would have had until the end of February 2016 to provide the Landlords with her forwarding address. There is no evidence before me that this time limit was extended through a previous order made by the Director. Therefore, I find the Tenant is now out of the Section 39 one year time period from the end of tenancy date to re-apply.

Conclusion

The Tenant failed to serve the Landlord with a forwarding address within one year of the tenancy ending. Therefore, the Tenant is now barred from making a claim for the return of it. The Tenant's Application is dismissed without leave to re-apply. The Landlords are at liberty to file an Application for their losses against the Tenant. 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: May 08, 2017

Residential Tenancy Branch