



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MND, MNDC

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The tenant's application is a request for an order for the return of a security deposit.

The landlord's application is a request for a monetary order for \$2500.00 and recovery of his \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

All testimony was taken under affirmation.

Decision and Reasons

Pursuant to section 62 of the Residential Tenancy Act, it is my decision that both of these applications are dismissed with leave to reapply, for failure to comply with the Residential Tenancy Act or Residential Tenancy Rules of Procedure.

Tenants Application

The tenant's application has been dismissed, with leave to reapply, because the tenant did not give the landlord a forwarding address in writing before applying for dispute resolution. The tenant claims that he sent a forwarding address to the landlord by text, however the landlord testified that he has not received the text with a forwarding address from the tenants, and since texting is not a recognized method of serving documents, it

is my finding that there is insufficient evidence to show that the landlord has received a forwarding address in writing.

Section 39 of the Residential Tenancy Act states:

- 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.

Therefore at the time that the tenant(s) applied for dispute resolution, the landlord(s) were under no obligation to return the security deposit and this application is premature.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord(s) are now considered to have received the forwarding address in writing as of June 6, 2017.

Section 24(2) of the Residential Tenancy Act states:

- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property **is extinguished** if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Therefore since the landlords did not complete a move-in or move-out inspection report, the landlords are now required to return the tenants security deposit within 15 days.

Landlords Application

The landlord's application has been dismissed with leave to reapply because; it appears that, the landlord has failed to provide evidence in support of his claim. The landlord claims that copies of his evidence were given to the Service BC Office to be forwarded to the Residential Tenancy Branch; however there is no evidence to show that the

Residential Tenancy Branch ever received that evidence, and the tenant has testified that he did not receive the landlord's evidence either.

It is my decision therefore that, if the landlord still wishes to proceed with a claim against the tenants, he must reapply for dispute resolution and ensure that all relevant evidence is served to both the Residential Tenancy Branch, and the tenant pursuant to the Residential Tenancy Rules of Procedure.

Conclusion

The tenant's application has been dismissed with leave to reapply.

The landlord's application has been 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: June 12, 2017

Residential Tenancy Branch