



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. The landlord did not appear at the hearing. The tenant submitted that she sent the hearing documents to the landlord via registered mail on November 21, 2016 using his service address as it appears on the tenancy agreement. According to the Canada Post website, the package was successfully delivered on November 22, 2016 and a signature obtained; however, the package was subsequently returned to the tenant as being "unclaimed". The tenant contacted Canada Post in an attempt to determine why the registered mail was signed for but then returned to her but Canada Post provided her with no explanation for the discrepancy. The tenant provided copies of the registered mail envelope addressed to the landlord, including a registered mail tracking number, the print out from the Canada Post website showing the tracking of the registered mail and signature was obtained for the landlord, and the tenancy agreement to demonstrate the address used for service was correct.

Section 90 of the Act deems a person to have received documents five days after mailing, even if the person refuses to accept or pick up their mail. I found the landlord to be deemed served with the hearing documents pursuant to section 90 of the Act and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The one year fixed term tenancy started August 15, 2014 and continued on a month to month basis thereafter. The tenant paid a security deposit of \$845.00. The tenant was required to pay rent of \$1,690.00 on the first day of every month. The tenancy ended September 30, 2016.

A move-in inspection report and a move-out inspection report was prepared by the landlord while the tenant was present. Both parties signed the condition inspection report. The tenant did not authorize the landlord to make any deductions from the security deposit. The tenant has not yet received a refund of the security deposit. The landlord has not made a claim against the security deposit by filing an Application for Dispute Resolution.

I noted that on the move-out inspection report the tenant's forwarding address is not written in the space provided or elsewhere on the report. The tenant testified that did not realize she is to write her forwarding address on the report.

The tenant testified that she gave the landlord her new address orally during the move-out inspection but that the landlord indicated he did not need her address as he would return the security deposit to her electronically as that is how the tenant had paid rent and the landlord had her email address.

The tenant testified that she did provide her new address to the landlord after the tenancy ended, via text message, so that he could deliver her cablevision box to her at her new home. She found the cablevision box at her new home, along with a copy of the move-out inspection report, shortly after her tenancy ended. The tenant noticed that the move-out inspection report was altered by the landlord after she had signed it, indicating he wanted to make a \$50.00 deduction for oven cleaning.

The tenant stated that all correspondence with the landlord was done via email or text messaging during the tenancy and that this was their ordinary way of communicating.

The tenant testified that her friend contacted the landlord in an attempt to have the security deposit refunded and the landlord indicated the tenant would have to take him to court to receive her deposit.

As documentary evidence, the tenant provided copies of: detailed written submission by the tenant including a chronology of events; the condition inspection report; the tenancy agreement; and an email from the tenant to the landlord in August 2014. The tenant offered to provide copies of text messages and bank statements to establish that communication and payment of rent was done electronically. I did not require or request the tenant to do so as I found her highly credible and I accepted that she likely has such evidence.

The tenant confirmed that the service address that appears on her Application for Dispute Resolution is her forwarding address and address of residence.

Analysis

As provided in section 38 of the Act, a landlord has 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to: return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based upon the unopposed evidence before me, I accept that the tenancy ended September 30, 2016 and the tenant participated in the condition inspection of the property. I also accept that landlord did not have the tenant's written consent to make any deductions from the security deposit and the landlord has not filed an Application for Dispute Resolution to make a claim against it.

The question is: when did the tenant give the landlord her forwarding address in writing? Giving a landlord a forwarding address in writing is a triggering event for the landlord to take action with respect to the security deposit. The tenant has the burden to provide a forwarding address in writing and has one year to do so under section 38 of the Act. It is not sufficient for a tenant to take the position the landlord "knew" where the tenant moved to.

Since the forwarding address is to be in writing, I find this is accomplished by giving a document to the landlord, whether it be the move-out inspection report or a separate letter. Where a party gives a document to another party, the giving must be done in a manner that complies with section 88 of the Act. Email and text messaging is currently not recognized as a permissible way to give a document under the Act. Although the parties may have regularly communicated electronically, I reject that all communication between the parties was electronic since the tenant was provided copies of the more formal tenancy documents such as the tenancy agreement and condition inspection report by the landlord. Therefore, I find the tenant had not met her burden to give the landlord a document with her forwarding address in a manner that complies with the Act before she filed this Application for Dispute Resolution.

The tenant's address does appear in writing on the Application for Dispute Resolution she sent to the landlord via registered mail on November 21, 2016 even if he did not

accept the registered mail I have found him to be deemed served. Accordingly, **I put the landlord on notice by way of this decision that he has 15 days from the date he receives this decision to do one of the following: return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. Should the landlord fail to fulfill this obligation the tenant may reapply and seek return of double the security deposit.**

The landlord is also put on notice that he will be deemed served with a copy of this decision five days after it is mailed to him by the Residential Tenancy Branch. To avoid any further excuses in not taking action with respect to the security deposit I have reproduced the tenant's forwarding address on the cover page of this decision for the landlord to use to refund the security deposit to the tenant or serve her with a Landlord's Application for Dispute Resolution.

Conclusion

The tenant's application is dismissed with leave.

The landlord has been put on notice by way of this decision that he has 15 days to take action with respect to the security deposit and if he fails to do so the tenant may make another application against him and request double the security deposit be returned to her.

The tenant's forwarding address has been reproduced on the cover page of this decision for the landlord to use to refund the security deposit to the tenant or serve the tenant with a Landlord's Application for Dispute Resolution to claim against the deposit.

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 09, 2017

Residential Tenancy Branch