



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 PRM
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, CNR*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied to cancel the notice to end tenancy and for the return of the damage and pet deposits.

At the start of the hearing the tenant informed me that he had moved out on June 30, 2017. Therefore the portion of the tenant's application to cancel the notice to end tenancy is moot and accordingly dismissed.

Also at the start of the hearing, the landlord informed me that the tenant had served her with the notice of hearing on September 06, 2017 which was just one day before this hearing. The landlord stated that she did not have adequate time to serve her rebuttal to the Residential Tenancy Branch or the tenant. The tenant agreed that he had served the landlord with the notice of hearing package on the day before the hearing.

Issues to be decided

Did the tenant serve the landlord with the notice of hearing package in a manner that is in compliance with the timelines set by the *Residential Tenancy Act*? If so, is the tenant entitled to the return of the deposits?

Background and Evidence

Both parties agreed that a pet deposit and a security deposit in the total amount of \$2,650.00 are currently held in trust by the landlord. The tenant agreed that he had not provided the landlord with a forwarding address in writing. The tenant stated that he did not do so because the parties had come to an agreement during the move out inspection regarding the amount the landlord was permitted to retain. The tenant stated that the landlord reneged on this agreement.

During the hearing the tenant provided the landlord with his forwarding address. The landlord understands that as of this date September 07, 2017, she has the forwarding address of the tenant and must proceed according to s. 38 of the *Residential Tenancy Act* if she intends to make a claim against the deposits.

Attempts to resolve this dispute by mediation were unsuccessful.

Analysis

Section 59 (3) of the *Residential Tenancy Act* states that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

The purpose of serving a notice of hearing to the respondent is to notify the person being served of matters relating to arbitration and to provide the person with an opportunity for rebuttal.

In this case, the tenant made application on June 16, 2017 and did not serve the landlord with a notice of hearing package until September 06, 2017 which was just one day prior to this hearing and almost three months after the date of application. Since the landlord was not provided with an opportunity for rebuttal, I dismiss the tenant's application with leave to reapply.

Conclusion

The tenant's application is 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: September 07, 2017

Residential Tenancy Branch