



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 scheduled to deal with a tenant's application for return of the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit and pet damage deposit?

Background and Evidence

The tenancy started on June 1, 2014 and the landlord collected a security deposit of \$400.00 and a pet damage deposit of \$200.00. The tenant vacated the rental unit on October 31, 2016. The tenant did not authorize the landlord to retain any part of the deposits in writing.

The tenant testified that she provided her forwarding address to the landlord orally, by way of email, and by way of text message in the two weeks following the end of the tenancy. The landlord acknowledged receiving emails and text messages from the tenant but stated the tenant did not include an address. Rather, the tenant merely indicated the deposits may be sent to the tenant at her place of employment. The landlord acknowledged that she knows where the tenant works. I noted that the tenant had not provided copies of the emails or text messages she sent to the landlord.

On November 15, 2016 both parties appeared for a dispute resolution proceeding to deal with the tenant's application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (file number provided on cover page of this decision). As of that date the tenant had already moved out of the rental unit and it was unnecessary for the Arbitrator to determine the validity of the 10 Day Notice or make any findings as to whether the tenant owed the landlord any rent or utilities since the landlords had not filed a cross application in time to be joined with the tenant's application.

On November 8, 2016 the landlords had filed an Application for Dispute Resolution to make a monetary claim against the tenant for unpaid rent for November 2016 and unpaid utilities and that hearing was set for May 11, 2017 (file number provided on cover page of this decision). The landlord used the tenant's place of employment as a service address for the tenant but was cautioned by an Information Officer that the address may not be sufficient. On May 11, 2017 neither the landlords nor the tenant appeared at the hearing and the landlord's application was dismissed with leave to reapply. The tenant stated she was not served with the landlord's application.

Analysis

Section 38 of the Act provides for the return or claim against a security deposit and pet damage deposit. A landlord has 15 days after the tenancy ends, or receiving the tenant's forwarding address in writing, whichever date is later, to either refund the deposit to the tenant; obtain the tenant's written consent to retain the deposit; or, file an Application for Dispute Resolution to claim against the deposit. If a landlord does not take one of the actions described above, the tenant may file an Application for Dispute Resolution to seek return of double the deposit. Accordingly, where a tenant seeks return of a security deposit and/or pet deposit, the tenant must deliver to the landlord a forwarding address in writing. Until a tenant delivers a written forwarding address to the landlord, the landlord is not obligation to take action with respect to the deposits.

Section 88 of the Act provides for ways a document is to be served upon the other party. Section 88 does not recognize email or text messages as a permissible way to serve a document.

Considering the tenant did not demonstrate that she delivered a written forwarding address to the landlord in one of ways permitted under section 88 of the Act, I find the tenant was premature in seeking return of the deposits when she filed this Application for Dispute Resolution. However, the tenant did deliver a written forwarding address to the landlord in a manner that complies with section 88 of the Act when she served the

landlord with her Application for Dispute Resolution. During the hearing, the tenant confirmed that the address appearing on the Application for Dispute Resolution is an address at which she can be served. Accordingly, I informed the parties that the landlord is now considered to be in receipt of a written forwarding address for the tenant and the landlord has 15 days from today's date to take action with respect the security deposit and pet damage deposit.

During the hearing, the tenant stated she was not agreeable to the landlord withholding any portion of the security deposit and pet damage deposit. As such, the landlord was informed that she has 15 days from today's date to either refund the deposits to the tenant or file an Application for Dispute Resolution to claim against the deposits. The landlord indicated she would be filing an Application for Dispute Resolution to claim against the deposits. The landlord was informed of her obligation to ensure the tenant is served with the Landlord's Application for Dispute Resolution.

The parties were also informed that if the landlord fails to take action with respect to the deposits within 15 days of today's date the tenant is at liberty to file another Application for Dispute Resolution and seek doubling of the deposits.

Conclusion

The tenant's application for return of the security deposit and pet damage deposit was premature and it is dismissed with leave to reapply.

The landlord is considered to be in receipt of a written forwarding address as of today's date and the landlord has 15 days to either refund the deposits to the tenant or file an Application for Dispute Resolution to claim against the deposits.

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: January 16, 2018

Residential Tenancy Branch