



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 the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: authorization to obtain the return of her security deposit pursuant to section 38; and authorization to recover the filing fee for this application pursuant to section 72.

The landlord/respondent did not attend this hearing, although I waited until 1:42 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant and her assistant attended the hearing. The tenant was given a full opportunity to be heard, to present testimony, and to make submissions towards her application for the return of her security deposit.

The tenant's assistant testified that the tenant's Application for Dispute Resolution package ("ADR") was sent via registered mail on July 27, 2017. After several attempts at service, the Canada Post package was returned to her. The tenant testified that she had sent correspondence to the landlord less than a week prior to sending the ADR by registered mail. She testified that the landlord had responded to that correspondence. The tenant and her assistant both testified that the landlord continues to live at the same address. Given the evidence presented by the tenant and her assistant and given the copy of the Canada Post tracking details submitted, I find that the landlord was deemed served with the tenant's ADR on August 1, 2017 (5 days after its registered mailing).

Issue(s) to be Decided

Is the tenant entitled to the return of all or a portion of her security deposit?
Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The tenant testified that this tenancy began on February 28, 2017 – the date of the signing of the residential tenancy agreement and the date the tenant began to occupy the rental unit. She submitted a copy of a residential tenancy agreement signed with a start date of March 1, 2017 and a rental amount of \$1600.00 payable on the first of each month. She testified that the landlord let her move in two days earlier than scheduled (on February 28, 2017). The tenant testified that no condition inspection report was prepared at move-in or move-out. She testified that at move-in, a walk through was done with the landlord. The tenant testified that she moved out on June 2, 2017 – a date that the landlord had agreed to. She testified that, on move-out, the landlord assured her the rental unit looked good and that she would send the tenant the security deposit.

The tenant testified that she sent an email to the landlord on July 4, 2017 requesting the return of her security deposit. The tenant testified that most of her correspondence with the landlord was done through email. She testified that the landlord regularly responded to her email messages. The tenant testified that, on July 5, 2017, she sent a letter advising the landlord that she would make a claim at the Residential Tenancy Branch if her security deposit was not returned. The tenant provided the letter as evidence for this hearing. The letter did not include the tenant's forwarding address. The tenant testified that she received no response and filed for a dispute resolution hearing on July 14, 2017.

Analysis

Section 38 of the Act addresses the return of security deposits,

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,

[emphasis added]

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit ... 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.

Section 39 provides that a landlord may retain a security deposit or other deposit if the tenant does not provide their forwarding address “in writing within one year after the end of the tenancy”.

In this case, while the landlord does not appear to have made a claim against the tenant’s security deposit, her claim is premature. The tenant provided the landlord with a forwarding address by text – she has evidence to support that she has done so. However the Act does not consider text correspondence to meet the standard of section 38(1)(b) and the service provisions of the Act - text or email message are not considered to be equivalent to providing a forwarding address in writing by letter or on the condition inspection report.

Section 38 requires a landlord to return the deposit after the later of the end of the tenancy AND the provision of the forwarding address in writing. The tenant provided her forwarding address by way of text message however text messages are not considered “written notice” for the purposes of service under section 88 of the *Act*. Accordingly, I find that the tenant’s forwarding address was not provided to the landlord in the format required under the *Act*.

Earlier in this decision, I found that the landlord was deemed served with the tenant’s Application in accordance with the *Act*. I find that the tenant’s service of this ADR to the landlord is considered written notice of the tenant’s forwarding address. The landlord is put on notice, through this decision that she is deemed to have received the tenant’s written forwarding address five (5) days after the date of this decision (decision date: January 31, 2018). The landlord then has 15 days after deemed receipt (until February 15, 2018) to either return the tenant’s security deposit in full or to file an application for dispute resolution. If the landlord does not complete either of the above actions by February 3, 2018, the tenant may apply for the return of double the amount of her security deposit in accordance with section 38 of the *Act*.

I cannot issue a monetary award to the tenant in these circumstances and I must dismiss the tenant’s application however I dismiss her application with leave to reapply.

Having been unsuccessful in this application at this time, I find that the tenant is not entitled to recover the filing fee paid for this application.

Conclusion

I dismiss the entirety of the tenant's application with leave to reapply. Any applicable timelines still apply.

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 31, 2018

Residential Tenancy Branch