



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

On August 21, 2017, the Tenant submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The matter was set as a teleconference hearing. The Tenant attended the hearing; however, the Landlord did not. The Tenant testified that she served the Landlord with the Notice of Hearing using registered mail on September 1, 2017. The Tenant testified that the mail was returned to her as unclaimed.

The Tenant testified that the rental property was sold in October 2016, and the new owner did not provide her with an address for service. The Tenant only had an email address that she used for communicating and making email money transfers for rent payments. The Tenant testified she contacted the previous owner who provided her the contact information for the new owner obtained from the sale of property documents. The Tenant sent the Notice of Hearing to the address she received from the previous Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy commenced on July 1, 2014, as a month to month tenancy. Rent in the amount of \$1,000.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$500.00.

The Tenant testified that the tenancy ended when she moved out on April 30, 2017.

The Tenant testified that when she moved out of the rental unit she provided the Landlord with her forwarding address in writing using registered mail and by text message. She testified that she sent the Landlord a text message on April 30, 2017, regarding leaving the keys in the mailbox and she provided her forwarding address for the return of the deposit. She testified that the Landlord replied to the text message by stating "sounds good".

The Tenant testified that there was no agreement that the Landlord was permitted to withhold the security deposit.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Analysis

Section 88 of the Act requires that documents served on a person must be given or served as follows:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*

- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) by any other means of service prescribed in the regulations.*

Section 71 of the Act provides that the director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];*
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;*
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

Section 13 of the Act requires a Landlord to prepare a tenancy agreement that provides the correct legal name and address for service of the Landlord or his agent.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

The Landlord breached section 13 of the Act by failing to provide the Tenant with the Landlord's service address.

I find that it is reasonable for the Tenant to rely on the address she was provided obtained from the sale agreement for the property. In addition, while text messaging is not a recognized method of service for documents, I accept the Tenant's testimony that the Landlord responded to her text message where she provided her forwarding address. A Landlord cannot avoid their responsibilities under the Act by failing to provide an address for service. Pursuant to section 71 of the Act, I find that the Landlord has been sufficiently served as of April 30, 2017, with the Tenant's forwarding address for the purposes of this Act.

There is no evidence before me that the Landlord applied for dispute resolution within 15 days of the end of tenancy or receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant that the Landlord could retain the security deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I order the Landlord to pay the Tenant the amount of \$1,100.00. I grant the Tenant a monetary order in the amount of \$1,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord breached section 13 of the Act by failing to provide a service address and breached section 38(6) of the Act by failing to make a claim against the security deposit or returning the security deposit within 15 days of receiving the Tenants forwarding address.

I order the Landlord to pay the Tenant the amount of \$1,100.00. I grant the Tenant a monetary order in the amount of \$1,100.00.

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: March 08, 2018

Residential Tenancy Branch