



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on September 6, 2017, wherein the Tenant sought return of her security deposit pursuant to section 38 of the *Residential Tenancy Act* (the "Act").

The hearing was scheduled for 1:30 p.m. on March 27, 2018. Only the Tenant, her daughter and her friend, called into the hearing.

Preliminary Matters—Service of the Application

As the Landlord failed to call into the hearing, service of the Tenant's Application for Dispute Resolution, evidence, and Notice of Hearing was considered.

The Tenant testified that after filing for Dispute Resolution on September 8, 2017 she personally served the Landlord's wife with the Hearing Package. The Tenant stated she believed that the Landlord's wife would have given him the papers when he returned home from work.

Section 89 of the *Act* deals with service of an Application for Dispute Resolution and provides in part as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (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 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 registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Service on the Landlord's spouse does not satisfy the requirements of section 89(1); as such, I find the Tenant failed to serve the Landlord as required by the *Act*.

One of the principles of natural justice is that a party to a dispute has the right to know the claim against them, including reviewing and responding to any evidence submitted by the Applicant, as well as the opportunity to attend any hearings in which the Applicant seeks orders against them. In this case, I am unable to find that the Landlord was served in accordance with the *Act*. I therefore am not able to proceed with the Tenant's Application as to do so would deny the Landlord a fair hearing.

I therefore dismiss the Tenant's claim with leave to reapply.

Preliminary Matters—Spelling of the Landlord's name

The Tenant confirmed that she misspelled the Landlord's surname on her Application. Pursuant to section 64(3)(c) of the *Act* I amend her application to accurately spell the Landlord's name.

Preliminary Matters—Tenant's Forwarding Address

While I have dismissed the Tenant's Application, I note that the Tenant's Application is premature as she has failed to provide the Landlord with her forwarding address in writing as required by section 38 of the *Act*. For clarity, I reproduce that section in part as follows:

Return of security deposit and pet damage deposit

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,

the landlord must do one of the following:

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

As such, and pursuant to the above, the Tenant's right to return of their deposit is not triggered until the Tenant provides her forwarding address in writing to the Landlord.

When I asked the Tenant whether she gave the Landlord a forwarding address to which to send her security deposit, the Tenant responded that the Landlord knew where she lived as she moved down the street. She also stated that she resides in a small community where mail is delivered to a post office box. The Tenant stated that the Landlord was provided with her post office box number when she moved into the rental unit. She confirmed that her post office box did not change when she moved out.

Security deposits are special in that they are trust funds which are held by the Landlord for the benefit of the Tenant. A Landlord must comply with the *Act* when dealing with such funds; for instance, once a Tenant makes a written request for return of their deposit, and provides the Landlord with the forwarding address to which the funds are to be sent, the Landlord must, within 15 days, either return the funds or make an application for their retention. A Landlord may not simply retain the funds and the funds may be doubled pursuant to section 38(6) of the *Act*.

However, a Tenant must provide the Landlord with their forwarding address in writing and must request that the security deposit be sent to that address. Should a Tenant fail to provide the Landlord with a forwarding address in writing within a year of the tenancy ending, the Landlord may retain the funds pursuant to section 39 of the *Act*.

Residential Tenancy Branch Practice Directive—September 21, 2015 provides that the requirements of section 38 and 39 of the *Act* are not met by the Tenant applying for Dispute Resolution and providing an address for service. Again, the Tenant must make a written request for return of their security deposit and must provide the Landlord with a forwarding address to which the funds are to be sent.

Further, while the Landlord may know where the Tenant lives, and may assume her post office box has not changed, it is the Tenant's responsibility, pursuant to sections 38(1) and 39 of the *Act* to provide the Landlord with their forwarding address in writing as well as their request for return of the funds; failing which the Landlord is not obligated to return the funds.

Conclusion

The Tenant failed to serve the Landlord in accordance with section 89 of the *Act*. Her application is dismissed with leave to reapply.

Prior to making a further Application for return of her security deposit, the Tenant *must* serve the Landlord with her forwarding address in writing and request return of her security deposit. The Tenant must also provide evidence of service for any subsequent hearing.

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 27, 2018

Residential Tenancy Branch