



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PPG MANAGEMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of the security deposit pursuant to section 38 of the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent NZ (the "landlord").

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's application and evidence. The tenant said that they did not receive the landlord's evidence until July 12, 2018 but confirmed they had received it. Where late evidence is submitted, I must apply rule 3.17 of the Rules of Procedure. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. As the tenant confirmed they received the evidence prior to the hearing and the evidence primarily consists of materials which the tenant confirmed she had received previously such as the tenancy agreement, condition inspection report and earlier decision of this Branch, I find that there is no unreasonable prejudice in admitting the evidence. I find that the materials were sufficiently served on the respective parties in accordance with section 71 of the Act.

Issue(s) to be Decided

Is the tenant entitled to recover the security deposit and pet damage deposit for this tenancy?

Background and Evidence

The written tenancy agreement provides the name of the corporate landlord as the named landlord in this application.

The tenants filed a separate application earlier, under the file number on the first page of this decision where they named a separate corporate entity as the respondent. A Monetary Order in the amount of \$2,398.00 against the other corporate entity was issued as a result of that application in November, 2016. That monetary order was set aside as the named respondent was found to never have been a party to the tenancy.

The tenant testified that this tenancy started in July, 2015 and ended on July 31, 2016. A security deposit of \$599.50 and pet damage deposit of \$599.50 were paid to the landlord at the start of the tenancy. The tenant said that they provided a forwarding address to the landlord by registered mail sent on August 12, 2016 to the service address provided on the tenancy agreement. The tenant said that mail was returned unclaimed by the landlord.

The landlord submits that they were never served with a copy of the tenant's forwarding address. The landlord testified that the tenant brought an earlier application against a separate corporate entity and may have served them with the forwarding address but the landlord has never been properly served.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. However, section 39 of the *Act* provides that despite any other provisions in the *Act*, if a tenant does not provide the landlord with a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit.

The tenant claims that they served the landlord with a forwarding address in writing on August 12, 2016 but no documentary evidence in support of their submission was submitted. The onus is on the applicant to show on a balance of probabilities that they served the forwarding address in accordance with the *Act*. I find that in the absence of documentary evidence, the landlord's testimony that they were not served and the fact that the tenant filed an earlier application against a separate corporate entity raises sufficient doubt that the tenant served the forwarding address on the landlord.

Section 39 of the *Act* provides that despite any other provisions in the *Act*, if a tenant does not provide the landlord with a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit and pet damage deposit.

Under the circumstances, I find that there is insufficient evidence that the tenant provided a forwarding address to the landlord. The tenant may have issued a forwarding address to another corporate entity or a related organization but that is not sufficient to find that a forwarding address was provided. Consequently, as I find that the tenant failed to provide a forwarding address to the landlord within one year after the end of the tenancy on July 31, 2016, the landlord is entitled to retain any deposits.

Conclusion

The tenant's application is dismissed without 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: July 16, 2018

Residential Tenancy Branch