



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 17, 2018 (the “Application”). The Tenants applied for the return of double the security deposit and sought reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and Tenants’ evidence. The Landlord confirmed he received the hearing package and Tenants’ evidence except for a copy of an email submitted. The Tenant testified that she served all documents on the Landlord but could not provide evidence in this regard. I excluded the copy of the email as I was not satisfied it was served on the Landlord in accordance with rule 3.14 of the Rules of Procedure.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of double the security deposit?

2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, property management company and the Tenants in relation to the rental unit. The tenancy started September 1, 2015 and was for a fixed term ending August 31, 2016. The Tenants paid an \$885.00 security deposit and no pet damage deposit. The agreement is signed by the Landlord and Tenants.

The parties agreed the tenancy became a month-to-month tenancy after August 31, 2016. The parties agreed the Tenants vacated the rental unit May 30, 2018.

The Tenant testified that she provided her forwarding address to the Landlord in writing by text message and in a letter. The Tenant had submitted the text message and letter as evidence. The text message provides the Landlord with an email address to e-transfer the security deposit to. The letter also only provides an email address to transfer the security deposit to.

The Tenant submitted that providing her email address was sufficient as the Landlord agreed to e-transfer the security deposit to her. The Tenant further submitted that her address was on the envelope the letter was sent to the Landlord in.

The Landlord acknowledged he received the text message from the Tenant. He pointed out that the letter sent to him asks that the security deposit be sent to the email address and does not provide a forwarding address.

Analysis

Section 38 of the *Residential Tenancy Act* (the “Act”) sets out the obligations of a landlord in relation to dealing with a security deposit held at the end of a tenancy. Section 38(1) states:

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.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Here, the Tenants have not provided the Landlord with their forwarding address in writing.

I do not accept that providing an email address is sufficient as the *Act* specifically requires the Tenants to provide a forwarding address.

Nor do I accept that sending mail with an address noted on it is sufficient to trigger the obligations of the Landlord under section 38(1) of the *Act*. An address noted on an envelope could be any address. I note that the address listed on the envelope submitted is different from the address the Tenant provided during the hearing as her forwarding address. I do not accept that the Landlord was required to infer from the envelope what the Tenants' forwarding address is.

I find the Tenants were required to provide the Landlord with a clear indication of what their forwarding address is to trigger section 38(1) of the *Act*. I do not accept that this was done in this case.

I also note that providing an address on an Application for Dispute Resolution is not sufficient.

Given the Tenants had not provided the Landlord with their forwarding address in writing prior to the hearing, the Application is premature. I decline to award the Tenants reimbursement for the filing fee in the circumstances. I dismiss the Application with leave to re-apply.

The Tenant provided the Tenants' forwarding address during the hearing and this is noted on the front page of this decision. The Landlord confirmed that he was clear on the forwarding address. I told the Landlord he was considered to have been served with the forwarding address as of the date of the hearing and that he had 15 days to comply with section 38 of the *Act*. If the Landlord does not comply with section 38 of the *Act*, it is open to the Tenants to re-apply.

Conclusion

The Application is premature and is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 26, 2018

Residential Tenancy Branch