



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for the return of their security deposit and for the recovery of the cost of the filing fee.

The tenant, legal counsel for the tenant ("counsel"), the landlord and a witness for the landlord ("witness") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. The parties were provided an opportunity to ask questions during the hearing.

The landlord confirmed that she received the tenant's documentary evidence. The landlord's documentary evidence was excluded in full as the landlord confirmed that she did not serve the tenant with the documentary evidence as required by the Rules of Procedure ("Rules").

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Determined

- What should happen to the tenant's security deposit?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on September 1, 2017. The parties did not agree on the date of the end of tenancy.

The tenant testified that he mailed his written forwarding address on November 15, 2017 to the landlord by regular mail; however, did not keep a copy of his written forwarding address to submit in evidence. The tenant also testified that he hand-delivered another written forwarding address to the father of the landlord, JS. Due to the tenant's claim that he personally served JS, the phone number of JS was requested and he was called into the hearing as a witness to provide affirmed testimony.

JS denied that the tenant ever provided his written forwarding address to JS and that JS did not have contact with the tenant since the start of the tenancy. Under cross-examination JS denied having any communication with the tenant regarding a move-out inspection.

The tenant testified that he did not use registered mail when mailing his written forwarding address and the landlord denied that any written forwarding address was provided and that the only way she was aware of the tenant's new address was when the tenant served her with his application which contained his new address.

The landlord testified that she has since filed for dispute resolution to claim towards the tenant's security deposit. That file number was provided and has been included on the cover page of this decision. That application was filed on August 28, 2018. Counsel stated that the tenant has not been served yet with the landlord's application.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

I am not satisfied that the tenant has served the landlord with their written forwarding address as required by section 38 of the *Act*. In reaching this finding, I have considered that the tenant failed to provide a copy of the written forwarding address, did not use registered mail to prove service, and the witness provided contradictory testimony that he was ever personally served as alleged by the tenant.

Based on the above, I find the tenant's application is premature as there is insufficient evidence before me that a written forwarding address was served on the landlord in writing by the tenant as required by section 38 of the *Act*.

Pursuant to Residential Tenancy Branch Practice Directive 2015-01, as both parties attended the hearing, I find that the date of the hearing September 10, 2018, to be the date the landlord was served with the tenant's written forwarding address which was confirmed during the hearing. The tenant's new forwarding address has been included on the cover page of this decision for ease of reference.

I do not grant the recovery of the cost of the filing fee as the application was premature.

Conclusion

The tenant's application for the return of their security deposit is premature.

September 10, 2018 is the date the landlord is considered to have received the tenant's written forwarding address as noted above.

Should the landlord fail to deal with the tenant's security deposit in accordance with section 38 of the *Act*, the tenant is at liberty to reapply for the return of their security deposit. I note that this decision does not extend any applicable timelines under the *Act*.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 10, 2018

Residential Tenancy Branch