



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 16, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on January 28, 2019 as a teleconference hearing. Only the Tenant appeared. No one appeared for the Landlord. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

The Tenant provided affirmed testimony that the Application and documentary evidence package was served on the Landlord in person on November 16, 2018. Based on the undisputed submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Application and documentary evidence on November 16, 2018. The Landlord did not submit documentary evidence in response to the Application.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The Tenant testified that the tenancy began on November 1, 2017, and ended on November 1, 2018. During the tenancy, rent was due in the amount of \$1,000.00 per month. The Tenant testified that he paid a security deposit of \$500.00 to the Landlord. The Tenant submitted a copy of the tenancy agreement in support of this testimony.

The Tenant testified that there was no condition inspection report completed at the start of the tenancy. Furthermore, the Tenant indicated that the Landlord did not offer any opportunities to complete a move out condition inspection at the end of the tenancy.

The Tenant testified that he texted the Landlord his forwarding address on November 4, 2018, requesting the return of his security deposit. The Tenant stated that he did not agree to any deduction from the security deposit.

The Tenant stated that his forwarding address was provided in writing and served onto the Landlord in person on November 16, 2018 as part of the Notice of Hearing package.

The Tenant is seeking the return of this security deposit in the amount of \$500.00 from the Landlord as well as the return of the filling fee.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in **writing** or the end of the tenancy, whichever is later.

Section 88 of the *Act* allows for documents, other than those referred to in section 89, that are required or permitted under this *Act* to be given to or served on a person must be given or served 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 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 mailbox 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;

The Tenant testified that he provided the Landlord with his forwarding address via text message on November 4, 2018. The Tenant provided a copy of the text in support. I find there is no evidence to confirm that the Landlord received this message. I further find that the text message does not meet the requirements of Section 88 of the Act.

The Tenant also testified that the forwarding address was provided in writing and served onto the Landlord in person on November 16, 2018 as part of the Notice of Hearing package.

According to the Residential Tenancy Branch Practice Directive (the "Practice Directive"); A forwarding address provided by the Tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

In light of the above, I find that the Tenant did not adequately serve the Landlord with his forwarding address in writing in accordance with Section 38(1) of the *Act*. Therefore, I dismiss the Tenant's Application with leave to reapply. The Tenant is required to provide the Landlord with their forwarding address in writing. It is suggested that this be done by Canada Post registered mail.

Section 39 of the *Act* establishes that it is the Tenant's obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does not occur, the Landlord may keep the Deposits and the Tenant's right to the Deposits is extinguished.

As the Tenant was not successful with their Application, I also dismiss the Tenant's Application for the return of the filing fee.

Conclusion

The Tenant's Application is dismissed with 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: February 7, 2019

Residential Tenancy Branch