



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

At the beginning of the hearing both parties confirmed the spelling of their names. The landlord's name was incorrectly spelled in the tenant's application. As neither party was opposed, I amended the landlord's name to reflect the correct spelling of her last name.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's Application and evidence. .

Preliminary Issue-Tenant's Forwarding Address

This fixed-term tenancy began on January 1, 2018, and ended on October 31, 2018, when the tenant moved out. Monthly rent was set at \$980.00. The landlord had collected a security deposit and pet damage deposit in the amounts of \$475.00 each deposit, and continues to hold these deposits. The tenant allowed the landlord to retain \$125.00 of her deposits, but has not received the remaining amount from the landlord. The landlord confirmed that they had not filed any applications, but testified that the tenant has not provided the landlord with her forwarding address in writing.

The tenant testified that she had provided the landlord with her forwarding address on two occasions. The tenant testified that she gave the resident manager a handwritten

notice on June 29, 2018, informing the landlord of her intention to move, and the address where she would be moving to. The tenant testified that she followed up with an email to the named landlord on September 27, 2018 with her forwarding address. The landlord denies having received either notice. The tenant included both documents in her evidentiary materials. The tenant testified that the landlord replied to her email with a “thank you”, which is proof that the landlord had received her email. The landlord confirmed that the email address is correct, but testified that she had never received that email from the tenant. The landlord testified that she had sent the landlord’s evidentiary materials for this hearing to a different address located in the tenant’s application as the tenant has never formally provided the landlord with her forwarding address.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant’s forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant’s security deposit, or make an application for dispute resolution against that deposit.

RTB Policy Guideline 17, paragraph 10 establishes the following:

The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.

The tenant had applied for the return of her security and pet damage deposits, but the landlord disputes having ever received the tenant’s forwarding address in writing. In order to claim for compensation or loss under the *Act*, the party claiming the compensation or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities that the landlord had failed to comply with the *Act*.

As it was disputed by the landlord that they had received the tenant’s forwarding address in writing, I must determine whether the tenant has met the burden of proof in demonstrating the provision of her forwarding address in writing to the landlord.

As both parties were present in the hearing, the tenant’s forwarding address was confirmed during the hearing, which differed from the address the landlord had sent the

evidentiary materials to. Section 88 of the *Act* lists the ways that a document must be served to another party.

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], 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;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71
- (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Although the tenant provided a copy of the email and response from the landlord, it was disputed by the landlord as received. When the other party disputes a claim, the burden of proof falls on the applicant to prove their claim. On a balance of probabilities, I find that the tenant has not provided sufficient proof of service to support that the landlord was provided with her forwarding address in writing.

As the tenant's forwarding address was confirmed during the hearing, I order that the landlord either return the security deposit and pet damage deposits to the tenant less the \$125.00 the tenant agreed may be deducted for carpet cleaning, obtain written consent to deduct a portion or keep the deposits, or file an application to keep the deposits within 15 days of receipt of this decision.

The tenant's application is dismissed with leave to reapply. If the landlord fails to comply with section 38 of the *Act*, and the above order, the tenant may apply for the return of her deposits and compensation under the *Act* for the failure of the landlord to comply.

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 27, 2019

Residential Tenancy Branch