



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The tenant attended the hearing via conference call and provided testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 6, 2018. The tenant submitted a copy of the Canada Post Receipt and the Tracking label as confirmation of service (as noted on the cover of this decision). I accept the undisputed testimony of the tenant and find that the landlord was properly served as claimed and is deemed served as per section 90 of the Act.

During the hearing the tenant's monetary claim was clarified in that she seeks \$20,725.00 for compensation and return of the security deposit. Extensive discussions with the tenant revealed that the tenant failed to disclose sufficient particulars of the compensation claim of \$19,800.00 in either the application or the submitted documentary evidence. As such, the tenant was informed that this portion of the monetary claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The remaining portion of the monetary claim for return of the \$925.00 security deposit was addressed.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$925.00 which consists of:

\$925.00	Return of Security Deposit
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The tenant provided testimony that the tenancy ended on October 31, 2018 and that the landlord was provided her forwarding address in writing for the return of the \$925.00 security deposit in a letter sent via Canada Post Registered Mail on December 6, 2018 as part of the notice of hearing package submitted documentary evidence. The tenant provided a copy of the Canada Post Registered Mail Receipt and a copy of the letter as submitted in the tenant's documentary evidence. The tenant stated that the landlord as of the date of the hearing has failed to return the original security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of the tenant and find that the tenant has failed to establish a claim for return of the \$925.00 security deposit. The tenant provided undisputed evidence that the tenant's forwarding address in writing was served to the landlord on December 6, 2018 as part of the notice of hearing package and submitted documentary evidence.

Residential Tenancy Branch Policy Guideline #17, Security Deposit, paragraph 10 states in part,

10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit¹¹.

In this case, I find that the tenant failed to properly serve the landlord with the forwarding address in writing as opposed to relying on the submission of the documentary evidence via Canada Post Registered Mail as part of the Notice of Hearing Package. As such, the tenant's application is pre-mature and is dismissed with leave to reapply. The tenant must serve the landlord separately in a distinct manner requesting the return of the security deposit as outlined in Section 38 of the Act.

Conclusion

The tenant's application is dismissed with leave to reapply.
Leave to reapply is not an extension of any applicable limitation period.

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: March 28, 2019

Residential Tenancy Branch