



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

This hearing dealt with an application by the tenant for a monetary order for return of double the security deposit paid to the landlord and for the return of the filing fee for the Application, under the Residential Tenancy Act (the "Act").

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on December 14, 2018. The tenant had provided tracking information from Canada Post indicating the mail had been refused. I find the landlord has been duly served in accordance with the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant testified that she sent the landlord her forwarding address by registered mail on November 6, 2018. The tenant testified that it was an oral tenancy agreement and

that she paid a \$500.00 security deposit. The tenant testified that she received her full deposit on December 24, 2018 despite moving out September 30, 2018.

Analysis

The tenant was unable to provide sufficient evidence as to when the tenancy started only that it ended on September 30, 2018. The tenant provided a registered mail receipt that she alleges proves that she sent the landlord her forwarding address. The tenant testified she has the letter, however; she did not submit that letter for this hearing. In addition, the tenant was unable to provide documentation to reflect the amount of deposit she has paid and some proof that she actually resided in the subject unit, such as mail. Section 38 of the Act addresses the issue before me as follows:

Section 38 (1) says that 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 tenant has not provided sufficient evidence to show that the landlord was provided her forwarding address in writing as required, as such I find that the tenant is premature in this application, accordingly; I dismiss the tenants' application with leave to reapply.

Conclusion

The tenants' 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: April 02, 2019

Residential Tenancy Branch