



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by email after March 31, 2019 (the end of the tenancy), because she did not know the Tenant's mailing address. The Tenant said she did not receive the hearing package from the Landlord. Based on the evidence of the Landlord, I find that the Tenant was not served with the Landlord's hearing package as required by s. 89 of the Act.

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

(2) An application by a landlord under section 55 [order of possession for the landlord],

56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

The Landlord's application was made on March 26, 2019, the Notice of Hearing was sent by email to the Landlord March 27, 2019 with a note that the hearing package must be served on the Tenant by March 30, 2019 (within three days of receiving the Notice of Hearing). The Tenant said she although she met with the Landlord on March 31, 2019, she did not receive the Landlord's hearing package until she made inquiries with the Residential Tenancy Branch before the hearing date. The Tenant said her call to the Residential Tenancy Branch is how she found out about the hearing. Further the Tenant said her evidence package was sent in late (5 days before the hearing) because she had not received the Landlord's application and hearing package.

The Landlord said she served the Tenant by email because she did not know the Tenant's mailing address.

The Tenant said the Landlord had her mailing address because the Landlord mailed evidence to her. The Tenant said her mailing address is the rental unit as she is having Canada Post forward all her mail to her new address and she does not want the Landlord to have her new address.

In addition the Tenant requested the Landlord to return the Tenant's security deposit if the Landlord's application is dismissed.

With regard to the security deposit.

Condition inspection: start of tenancy or new pet

Section 23 of the Act says:

(1) The landlord and tenant together **must** inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

Section 24 of the Act says:

(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Landlord and Tenant both agreed no move in condition inspection report was completed at the start of the tenancy. Consequently, I order the Landlord to return the Tenant's security deposit within 15 days of receiving this decision.

Analysis

Pursuant to section 89 of the Act the Landlord did not comply with the Act with regards to serving the Tenant the Notice of Hearing and the Application (the Hearing Package); therefore the Landlord's application is dismissed with leave to reapply due to late and incorrect service of the Hearing Package to the Tenant.

Conclusion

The Landlord's application is dismissed with leave to reapply.

The Landlord is order to return the Tenant's security deposit within 15 days of receiving this decision.

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: June 04, 2019

Residential Tenancy Branch