



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on February 19, 2019 (the “Application”). The Tenants applied for return of the security and pet damage deposits as well as reimbursement for the filing fee.

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants who did not have questions when asked. The Tenants provided affirmed testimony.

During the hearing, the Tenants confirmed they were seeking return of double the deposits if I found the Landlord breached the *Residential Tenancy Act* (the “Act”).

The Tenants had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and Tenants’ evidence.

Tenant M.S. testified that she served a copy of the hearing package and evidence on the Landlord in person at the Landlord’s work on February 25, 2019. No evidence of service had been submitted to me.

Based on the undisputed testimony of Tenant M.S., I find the Landlord was served with the hearing package and evidence in accordance with sections 88(a) and 89(1)(a) of the *Act*. I also find the hearing package and evidence were served in sufficient time to allow the Landlord to appear at the hearing.

The only evidence submitted to me was a screen shot of a text message dated February 18, 2019. Tenant M.S. said she had submitted further evidence. She advised

that she submitted the evidence online. I asked Tenant M.S. if she had the confirmation that would have been sent by the RTB in relation to the uploaded evidence. Tenant M.S. could not find this. I advised the Tenants that I would not allow further evidence to be submitted given the hearing has started unless I am satisfied they uploaded it and there was an issue on the RTB side. I told the Tenants that, in the absence of the confirmation showing what evidence was uploaded, I cannot be satisfied that the issue was on the RTB side. I told the Tenants I would not allow them to submit further evidence at this point.

The Tenants were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the Tenants. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security and pet damage deposits?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants testified as follows in relation to the tenancy agreement. There was a written tenancy agreement between the parties in relation to the rental unit. The tenancy started February 01, 2018 and was for a fixed term of two years. Rent was \$2,200.00 per month due on the first day of each month. The Tenants paid a \$1,100.00 security deposit and \$1,100.00 pet damage deposit.

The Tenants testified that the tenancy ended January 31, 2019. The Tenants testified that the Landlord still holds the deposits.

Tenant M.S. testified that she emailed and texted her forwarding address to the Landlord. She testified that her forwarding address was also on the envelope for the hearing package and evidence for this matter.

Tenant C.S. testified that she texted her forwarding address to the Landlord.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to dealing with a security deposit held at the end of a tenancy. Section 38(1) states:

38 (1) 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 landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[emphasis added]

Email and text are not considered “in writing” as that term is used in the *Act*. Further, neither email nor text is a form of service permitted under section 88 of the *Act*.

I would find email or text sufficient to trigger section 38(1) of the *Act* if there was evidence before me that the Landlord in fact received the email and/or text. However, there is no such evidence before me. The text submitted does not include a reply from the Landlord or any indication the Landlord received it. This is the only evidence before me. The Landlord did not appear at the hearing to confirm she received the texts and/or emails.

In the circumstances, I am not satisfied the Tenants provided the Landlord with their forwarding addresses in writing as required by the *Act*. Therefore, section 38(1) of the *Act* has not been triggered. I note that providing an address on the Application is not sufficient to trigger section 38(1) of the *Act*.

Given the Tenants did not provide the Landlord with their forwarding address in writing prior to filing the Application, the Application is premature. I dismiss the Application with leave to re-apply. This does not extend any time limits set out in the *Act*.

I decline to award the Tenants reimbursement for the filing fee in the circumstances.

If the Tenants wish to have their security and pet damage deposits returned, they will need to provide the Landlord with their forwarding address in writing as required under the *Act*.

Conclusion

The Application is premature and is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 07, 2019

Residential Tenancy Branch