



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend the hearing.

Preliminary Issue: Service of Tenant's Application and a forwarding address

The tenant testified that on May 6, 2019, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail receipt and tracking number was provided in support of service. The registered mail was returned to the sender as unclaimed. The tenant testified that the mail was sent to the rental unit address which is the only address provided by the landlord. The landlord did not reside at this address and the house was sold by the landlord well over a year ago. The tenancy ended on April 30, 2017. The tenant testified that the landlord "knew" of the tenants business address at the time of the tenancy. The tenants did not provide a forwarding address in writing to the landlord. The tenant testified that she sent a text message to the landlord at the end of the tenancy advising that the business address could be used as the forwarding address. The tenant did not have a copy of the text message.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...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 document]...*

Given that the tenants waited two years since the date the tenancy ended to file this application and the landlord has since sold the property, I am not satisfied the landlord has been served with the tenants' application for dispute resolution by registered mail at an address at which he resides or carries on business as a landlord or in any other manner required by section 89(1) of the *Act*.

Further, section 88 of the *Act* sets out how documents may be served. Text and/or e-mail message is not an acceptable method of service pursuant to section 88 of the *Act*. I am not satisfied that the landlord was provided a forwarding address which triggers the requirement for the landlord to either return the security deposit or file a claim against the deposit.

The tenant is cautioned that their right to claim a return of the security deposit may be extinguished if they did not provide a forwarding address within one year of the end of the tenancy pursuant to section 39 of the *Act*. The tenant is also cautioned that this application appears to be filed one day outside the two year time limit from the end of the tenancy to file an application and any subsequent application may be out of time.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I dismiss the tenants' application 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: June 20, 2019

Residential Tenancy Branch