



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$1073.
- b. An order to recover the cost of the filing fee.

The Landlord failed to appear at the scheduled start of the hearing which was 1:30 a.m. on August 6, 2019. The Tenant respondent was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides. It is deemed received 5 days after mailing. The Policy Guidelines further provides that a party cannot avoid service by refusing to pick up their registered mail. The landlord did not provide a copy of the registered mail receipt. She testified that she served the Application for Dispute Resolution/Notice of Hearing on the landlord by mailing, by where he resides on May 23, 2019. The documents were returned with a notation "unclaimed." With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2017. The parties extended the agreement setting the end of tenancy date for April 30, 2019. The rent was \$1850 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$925 and a utility deposit of \$500 at the start of the tenancy. . The tenancy ended on April 30, 2019.

The Agent for the landlord testified that she provided the landlord with the tenant's forwarding address in writing by e-mail on May 15, 2019. The agent did not provide a copy of that e-mail transmission or proof that the landlord received it. She testified the landlord never responded to that e-mail transmission.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$950 and a utility deposit of \$500 at the start of the tenancy. I determined the tenancy ended on April 30, 2019.

The agent for the tenants testified that she attempted to provided the landlord with the tenants forwarding address by e-mail on May 15, 2019. The Act does not recognize service by e-mail as an acceptable way to serve a Notice. The agent did not provide a copy of that e-mail transmission. Finally she testified that the landlord did not acknowledge receipt of that e-mail or respond to it.

Section 88 of the Act provides as follows:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (j) by any other means of service prescribed in the regulations.”

I determined service of a Notice by e-mail is not sufficient where the tenant failed to provide a copy of that e-mail or confirm that the responded to it indicating that he received it.

Further, the Act provides that a landlord has 15 days from the later of the end of tenancy or when the landlord receives the forwarding address in writing to return the deposit(s) or file an Application for Dispute Resolution. In this case the tenant failed to wait the required 15 days.

As a result I ordered that the application of the tenants be dismissed with liberty to re-apply.

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: August 06, 2019

Residential Tenancy Branch