



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* (the "Act") for:

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 1:52 P.M. to enable the landlords to call into this hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, his witness and I were the only ones who had called into this teleconference.

The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant testified that she served the landlord with the Application for Dispute Resolution Proceedings Package by sending it via registered mail to a PO Box listed as the landlord's address for service provided on the tenancy agreement on June 19, 2019. The tracking number is listed on the cover page of this decision. The tenant testified that the original Application for Dispute Resolution Proceedings Package was returned to her as unclaimed. I am satisfied the landlord has been served the Application for Dispute Resolution Proceedings Package in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Background and Evidence

The tenant provided a copy of the unsigned tenancy agreement as evidence. She testified that she was sent the tenancy agreement to sign by the landlord however she neglected to sign it and send back as she was not living in the community at the time. At the commencement of the tenancy, the landlord collected a \$600.00 security deposit and \$200.00 pet damage deposit by e-transfer which the landlord continues to hold. The e-transfer was done on July 17, 2018, though the tenant moved in on July 15th. No condition inspection report was conducted at the commencement because the landlord advised the tenant she knew the damage that was in the house already.

The tenancy ended by a mutual agreement and the tenant moved out on January 1, 2019. No attempt was made by the landlord to arrange a condition inspection report to be done on move-out.

On March 21, 2019, the tenant provided the landlord with her forwarding address and request to return the security deposit. The tenant testified she sent it by ordinary mail to the address of the rental unit, not the address for service provided on the tenancy agreement because she had misplaced the tenancy agreement and she didn't have the address for service provided on it. The tenancy agreement was later discovered by the tenant as she was preparing for this Application for Dispute Resolution.

The tenant testified that she and the landlord and 3 or 4 others shared the mailbox at the residential address of the rental unit. When the tenant went to check the mailbox some time after March 21st, she noticed the notice of forwarding address letter she mailed to the landlord was still in the mailbox although nobody else's mail was left behind.

Analysis

A landlord must repay a security deposit and/or a pet damage deposit within 15 days of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, pursuant to section 38 of the *Act*.

A tenant is required to serve the landlord with her forwarding address in accordance with section 88 of the *Act* which states:

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.

Residential Tenancy Branch Policy Guideline PG-12 [Service Provisions] indicates the following:

If a tenant intends to serve a document on the landlord in one of the above ways at the address at which he or she carries on business as a landlord, the tenant will need to determine the address at which the landlord carries on business as a landlord before serving. Such an address may include the following:

- The address of the landlord as set out in the written tenancy agreement.
- ...
- A post office box where it is set out in the tenancy agreement as the address of the landlord, or it is the address where the landlord receives mail and

notices, or is specified by the landlord to be his or her address for receiving mail or notices.

The tenant testified she sent notice of her forwarding address by ordinary mail to the former rental unit, not an address at which the landlord carries on business as a landlord, a PO Box as listed in the tenancy agreement. Further, the tenant has given evidence that several people, including herself had access to the shared mailbox where she sent the notice of forwarding address.

As such, I am not satisfied the tenant has complied with section 38 of the *Act* and by providing the landlord with her forwarding address in accordance with section 88. Therefore, I find the landlord is under no obligation to return the tenant's security deposit or pet damage deposit until the forwarding address has been received.

Conclusion

I find the tenant's forwarding address has not been received by the landlord and the tenant is therefore premature in filing her application for a return of the security deposit.

I dismiss the tenant's Application for Dispute Resolution with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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: September 26, 2019

Residential Tenancy Branch