



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This review hearing dealt with the tenants' 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; and
- recovery of the filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing. The Notice of Hearing was confirmed to contain the correct information. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Issue(s) to be Decided

Should the decision and order of September 16, 2019 be affirmed, varied or set aside and replaced with a different decision?

Background and Evidence

The original hearing was held on September 16, 2019. The tenants were granted a monetary award for double the security deposit and their filing fee.

The landlord applied for a review of the September 16, 2019 decision. In the Review Consideration decision dated September 23, 2019 the presiding arbitrator suspended the decision and order of September 16, 2019 and ordered that a new hearing be convened.

In the Review Consideration decision the arbitrator writes:

Notices of the time and date of the hearing are included with this Review Consideration Decision for the review applicant to serve to the review respondent within 3 days of receipt of this decision.

The landlord testified that the Review Consideration Decision and Notice of Hearing were served on each of the tenants by registered mail sent on September 24, 2019 to the address for service provided in the tenant's application. The landlord provided 2 valid Canada Post tracking numbers as evidence of service.

The landlord testified that they have still not been provided with a forwarding address by the tenants.

Analysis

Section 89(1) provides the manners by which a decision to proceed with a review may be given to one party by another. Sending a copy by registered mail to the address for service indicated on the original Notice of Dispute Resolution is an acceptable manner of service under the Act.

I accept the evidence of the landlord that they served each of the tenants with the Review Consideration Decision and Notice of Reconvened Hearing by registered mail sent to the service address provided. Based on the evidence I find that each tenant is deemed served with the Notice of Hearing and materials on September 29, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the tenant's provision of a forwarding address in writing.

The landlord testified that they have not yet been served with the tenants' forwarding address in a manner consistent with the Act.

As the applicants did not attend this hearing I find that there is insufficient evidence to dispute the landlord's submissions and establish that a forwarding address has been provided. As I am unable to determine that a forwarding address has been provided by the tenants to the landlord, I find that the landlord's obligation under the *Act* to return the tenant's security deposit has not started. Once the tenants provide a forwarding address to the landlord in writing, in a manner consistent with the *Act*, the landlord will then have 15 days to apply for dispute resolution or return the tenant's security deposit.

Accordingly, I dismiss the tenants' application with leave to reapply.

Conclusion

The decision and order of September 16, 2019 are set aside and replaced with this decision.

The tenants' application is dismissed with leave to reapply.

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: December 3, 2019

Residential Tenancy Branch