



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

On February 4, 2020, the tenant's application for dispute resolution was dismissed.

On February 27, 2020, the tenant made an application for review consideration, which was granted on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control.

The Arbitrator ordered the parties to participate in a new hearing, and the original decision was suspended. The Arbitrator at the new hearing may confirm, vary, or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by the tenant for the return of the security deposit and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue to be Decided

Is the tenant entitled to the return of their security deposit?

Background and Evidence

The tenancy began October 2018. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The tenant testified that they vacated the premises on August 30, 2019. The tenant stated that they probably provided the landlord with a written notice of the forwarding address on August 30, 2019, by text message.

The tenant's mother stated that some flexibility should be given because her son suffers from a mental disability.

The landlord testified that they looked back in their text messages just in case they missed it, and they have no record of it being received.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

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,

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;

In this case, I am not satisfied that the tenant has provided the landlord with their forwarding address or that it was served in an approved method under the Act. Text message is not an approved method of service.

While I accept the tenant suffers from a mental disability; however, the provisions of the Act apply to everyone.

Therefore, I find the tenant's application was filed prematurely, as they must provide their forwarding address in writing and served in a method approved of under the Act, prior to making their application. Therefore, I dismiss the tenant's application with leave to reapply.

Based on the above finding, I find it appropriate to cancel the original decision and replace it with this decision.

Conclusion

The tenant's 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: April 28, 2020

Residential Tenancy Branch