



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Canadian National Relocation Ltd
and [tenant name suppressed to protect privacy]

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 obtain a return of the security deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate tenant was represented by their agent (the "tenant") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their notice of application dated January 22, 2020 and evidence by registered mail sent on January 31, 2020. The tenant provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the materials on February 5, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided the following undisputed facts. This tenancy began on September 4, 2017. The monthly rent was \$13,500.00 payable on the first of each month. A security deposit of \$6,750.00 was paid at the start of the tenancy.

The tenant was unclear on when the tenancy ended but believes that it was within a few months of the start of the tenancy. Among the documentary evidence submitted by the tenant are email correspondence dated October 17, 2017 where the tenant provides a forwarding address and requests a return of the security deposit. There is a subsequent email dated December 19, 2017 where the tenant again requests a return of the deposit and provides their forwarding address.

The tenant submits that there was no condition inspection report prepared at any time for this tenancy and that they have not given written authorization that the landlord may retain any portion of the deposit. The tenant now seeks a return of double the security deposit for this tenancy.

Analysis

In accordance with section 38 of the Act, a landlord is required to either return the 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 or upon receipt of the tenant's forwarding address in writing.

The tenant was unable to recall when this tenancy ended. Based on the evidence submitted I find that the tenancy had ended by December 19, 2017 when the tenant issues a final demand for their security deposit. A landlord would not be obligated to return a security deposit prior to the end of the tenancy and the evidence shows that the tenant was requesting a return from October 17, 2017 onwards. I find it unlikely that the tenancy continued for months after the tenant had given a forwarding address and made a request for the return of the deposit. Based on the documentary evidence as well as the testimony of the tenant I find that this tenancy had ended by December 19, 2017.

Section 60 of the Act provides that an application for dispute resolution must be made within 2 years of the date that the tenancy to which the matter relates ends.

In the present case I have found that this tenancy ended by December 19, 2017 and therefore the tenant had 2 years from that date to file an application related to this tenancy. The tenant filed their application for dispute resolution on January 22, 2020, outside of the 2-year limit provided under the Act. Accordingly, I find that this application was not filed within the required timelines and is statute barred from proceeding.

In any event, section 39 of the *Act* provides that if a tenant does not provide a forwarding address in writing to the landlord within 1 year after the end of the tenancy the landlord may keep the security deposit and the tenant's right to a return of the deposit is extinguished.

The tenant submits that they provided a forwarding address to the landlord by the emails of October 17, 2017 and December 19, 2017 submitted into evidence. Email is not an acceptable method of provided a written forwarding address in accordance with section 88 of the *Act*. The tenant did not submit that they had provided their forwarding address in any other manner. Accordingly I find that the tenant had not provided their forwarding address in a manner consistent with the Act within 1 year from the time the tenancy ended and they had thus extinguished their right to a return of the deposit.

For the above reasons the tenant's application is dismissed.

Conclusion

The tenant's application is dismissed in its entirety without 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: June 15, 2020

Residential Tenancy Branch