



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stanley R Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

This 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 their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

SJ attended the hearing on behalf of one of the named landlords in the tenant's application. SJ testified that he was not a party to this dispute as he is not the landlord, nor agent for the landlord. As neither party was opposed, the tenant's application was amended to remove SJ's company's name from the tenant's application, and SJ was excused from the hearing.

While the tenant MP attended the hearing by way of conference call, the landlord DXL did not. I waited until 1:47 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that he had served the landlord with his application for dispute resolution hearing package ("Application") and evidence by way of registered mail on February 8, 2020. The tenant provided a photo of the package and tracking number. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord deemed served with the Application and evidence on February 13, 2020, five days after mailing.

Preliminary Issue-Tenants' Forwarding Address

This tenancy was to begin on March 1, 2020, with monthly rent set at \$2,700.00, but the tenants never moved in. The tenants provided the landlord with a security deposit in the amount of \$1,345.00, which is still held by the landlord.

The tenants filed this application for the return of their security deposit. The tenant testified in the hearing that he had never formally provided the landlord with his new forwarding address, but that his mail is currently forwarded from the previous address.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

The tenants had applied for the return of their security deposit, but did not provide sufficient evidence to support that the landlord was provided with their forwarding address in writing, as required by section 38 of the *Act*. The landlord did not attend the hearing, and the tenants did not provide any witness testimony or any kind of confirmation that the landlord had received the forwarding address from the tenants. Accordingly, I dismiss the tenants' application with leave to reapply. The tenants must provide their forwarding address to the landlord in writing, and the landlord must, within 15 days of the receipt of that address, either return the tenants' security deposit, or make an application for dispute resolution. If the landlord fails to comply with section 38 of the *Act*, the tenants may reapply. Liberty to reapply is not an extension of any applicable limitation period.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

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 26, 2020