



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on January 20, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by C.T. who provided affirmed testimony. The Landlord did not attend the hearing.

On behalf of the Tenants, C.T. testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on January 20, 2020. C.T. testified that she remembers paying extra to require the Landlord's signature. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find these documents are deemed to have been received by the Landlord on January 25, 2020. The Landlord did not submit documentary evidence in response to the Application.

On behalf of the Tenants, C.T. was given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence by the Tenants confirms the tenancy began on March 1, 2016. C.T. testified the tenancy ended on May 31, 2018. The Tenants paid a security deposit in the amount of \$1,450.00, which the Landlord holds.

On behalf of the Tenants, C.T. testified that the Tenants sent messages to request the return of the security deposit and that the Landlord is aware of her husband's business address. However, despite questioning, no testimony was offered and no documentary evidence was adduced to confirm the Landlord was provided with the Tenants' forwarding address in writing.

During the hearing, C.T. also referred to a previous application by the Tenants for the return of the security deposit. None of the parties attended the hearing scheduled on January 6, 2020 and the application was dismissed with leave to reapply. The file number of the related proceeding is included above for ease of reference.

The Tenants also sought to recover the filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find there is insufficient evidence before me to conclude the Tenants provided the Landlord with a forwarding address in writing as required under the *Act*. During the hearing, C.T. was asked whether a forwarding address in writing was provided to the Landlord. She responded by stating the Landlord had been given a message and indicated the Landlord was aware of her husband's business address. That is not what is required under the *Act*.

Section 60(1) of the *Act* confirms an application for dispute resolution must be made within two years of the date that the tenancy to which the matter relates ends or is assigned. In this case, the tenancy ended more than two years ago on May 31, 2018. Accordingly, I find that the Application is dismissed without leave to reapply.

Conclusion

The Application is dismissed 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 9, 2020

Residential Tenancy Branch