



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MNSD, MND, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, for the cost of cleaning and repairs and for the filing fee and to retain the security deposit in partial satisfaction of the monetary claim. The tenant applied for the return of the security deposit and for the recovery of the filing fee.

The tenant testified that he served the notice of hearing on the landlord on May 20, 2020 by email. The tenant had difficulty uploading evidence and contacted the Residential Tenancy Branch multiple times. The tenant was attempting to upload evidence in a format that is unacceptable. On May 28, 2020 an Information Officer cautioned the tenant that the format he was using to upload evidence was prohibited as it represented a serious risk for viruses and/or malicious content and/or damage to the Branch's computer systems. The information officer also informed the tenant that his evidence was not available for viewing by the arbitrator and gave him the option of withdrawing his application and reapplying in order to comply with the requirements.

Since the tenant did not use an acceptable format to upload his evidence, I was unable to see any proof of service of the notice of hearing package to the landlord. However, the landlord had made his own application on May 17, 2020 but did not attend the hearing. Since the landlord did not attend this hearing, his application is dismissed without leave to reapply.

Issues to be decided

Is the tenant entitled to the return of the security deposit and to the filing fee?

Background and Evidence

The tenant testified that the tenancy started on March 16, 2020 and ended on April 16, 2020. The monthly rent was \$1,250.00 due on the last of each month. Prior to moving in the tenant paid a security deposit of \$1,250.00. The landlord is currently holding the security deposit.

The tenant testified that he provided the landlord with his forwarding address by email but could not recall the date that he did so. In addition, the tenant did not file evidence that could be viewed by me, to support his testimony of having served the landlord with his forwarding address.

Analysis:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, even if I accept the tenant's testimony that he served the landlord with the notice of hearing, I find that the tenant failed to provide proof of having served the landlord with his forwarding address in writing. The tenant is now aware that he must provide the landlord with his forwarding address in writing and allow the landlord 15 days to return the security deposit or make application to keep it.

Since the tenant had difficulty uploading evidence, I will give the tenant the benefit of the doubt and give the tenant one more opportunity to reapply.

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: June 15, 2020

Residential Tenancy Branch