



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a return of her security deposit and pet damage deposit; and
- recovery of the filing fee.

The tenant attended the hearing; however, the listed landlords did not attend.

The tenant stated she served the landlords/respondents with her application for dispute resolution and Notice of Hearing by registered mail. The tenant provided the Canada Post Tracking Numbers to confirm this mailing. Those numbers are listed on the style of cause page in this Decision.

I accept the tenant's evidence that the landlords were served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlords' absence.

The tenant was provided the opportunity to present her evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the tenant's submissions and or arguments are reproduced here.

Issue(s) to be Decided

Is the tenant entitled to a monetary order comprised of her security deposit and pet damage deposit and to recover her filing fee?

Background and Evidence

The written tenancy agreement submitted by the tenant shows the tenancy officially began on February 1, 2019, for a monthly rent of \$1,250 and a security deposit and pet damage deposit of \$525, each, being paid by the tenant.

The tenant said she moved into the rental unit early, on January 26, 2019, and vacated the rental unit on August 1, 2019.

The tenant submitted documentary evidence and testimony that she provided her forwarding address to the landlord on June 27, 2019, via an email communication. The tenant confirmed the landlord did not respond to that email.

The tenant also submitted that the parties exchanged text messages, and in some of the text messages, the landlord indicated the security deposit and pet damage deposit were mailed. The tenant said that was not the case, as she has never received them.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or pet damage deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of her security deposit.

Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlord in this case, **must** be given or served in the ways listed in this section of the Act. Email communication is not an approved method of delivery of those documents under the Act. (emphasis added)

I therefore find that the tenant's application is premature, due to the fact that the tenant confirmed she has not provided her written forwarding address in writing to the landlord in a way required by section 88 of the Act.

The tenant should have served her forwarding address in writing to the landlord in accordance with the Act and allow the landlord the applicable timeline under section 38 of the Act, which is fifteen days, to either return her security deposit and pet damage deposit in full or file an application claiming against those two deposits.

I therefore dismiss the tenant's application, with leave to reapply.

As the tenant's application was premature, I do not grant the tenant the recovery of the filing fee.

The tenant should be aware of section 39 of the Act which states that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Conclusion

The tenant's application is premature and is therefore 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 23, 2020

Residential Tenancy Branch