



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL-S, FFL

Introduction

On May 18, 2020 the Landlord submitted an Application for Dispute Resolution (the "Application"), seeking relief pursuant to the *Residential Tenancy Act* (the "Act") for the following:

- a monetary order for unpaid rent;
- a monetary order for damage or compensation;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on August 27, 2020 as a teleconference hearing. Only the Tenant attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 13 minutes before the call ended. 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 Tenant and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.3 of the Rules of Procedure states that if a party does not attend the hearing, the hearing may proceed without that party or the application may be dismissed with or without leave to reapply. As no one attended the hearing for the Landlord, I dismiss the Landlord's Application without leave to reapply. As the Landlord had applied to retain the Tenant's security deposit, the hearing continued to determine if the Tenant is entitled to the return of her security deposit.

The Tenant was given an 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.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

The Tenant stated that the tenancy started on March 7, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$2,450.00 to the Landlord each month. The Tenant stated that she paid a security deposit to the Landlord in the amount of \$1,225.00 which the Landlord continues to hold. The Tenant stated that the tenancy ended on May 4, 2020.

The Tenant stated that the Landlord had her forwarding address as part of the tenancy agreement and that the Landlord knows the Tenant's contact information, therefore, the Landlord could have contacted the Tenant to inquire about her forwarding address. Lastly, the Tenant stated that the Landlord is aware of the Tenant's employer, and that the Landlord could have contacted the Tenant's employer to obtain the Tenant's forwarding address.

Analysis

Based on the documentary evidence before me for consideration 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 a claim against 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 comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

Section 88 of the *Act* allows for documents, other than those referred to in section 89, that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

In this case, the Tenant provided no evidence to demonstrate that she provided the Landlord with her forwarding address in writing. It is the Tenant's responsibility to provide the Landlord with their forwarding address in writing in accordance with Section 38(1) of the *Act*. It is suggested that this be done by Canada Post registered mail.

Section 39 of the *Act* establishes that it is the Tenant's obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does not occur, the Landlord may keep the Deposit and the Tenants' right to the Deposit is extinguished.

Conclusion

No one attended the hearing for the Applicant, therefore, the Landlord's Application is dismissed without leave to reapply. The Tenant has not yet served her forwarding address to the Landlord in writing, therefore, she is not yet entitled to the return of her security deposit.

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: August 27, 2020

Residential Tenancy Branch