



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on June 24, 2020 seeking an Order granting a refund of the security deposit.

This participatory hearing was convened after an agent of this office determined the full information regarding the tenancy was not in place to proceed by a direct request proceeding. The agent informed the tenant of this on June 24, 2020. This generated a Notice of Hearing sent to the Applicant tenant.

The tenant forwarded this information to the landlord, including their prepared evidence. The landlord confirmed delivery of this information via registered mail.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the *Act*) on October 15, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Issue(s) to be Decided

Is the tenant entitled to an Order granting a refund of double the amount of the security deposit pursuant to section 38(1)(c) of the *Act*?

Background and Evidence

The landlord spoke to the terms of the tenancy agreement and the tenant confirmed the information. The agreement was in place for the rental unit leased by the tenant. The tenancy

started on October 26, 2019 on a month-to-month basis. The rent amount was \$850.00 per month. The tenant paid a security deposit of \$425.00 on October 23, 2019.

The tenant at the hearing stated they gave notice to the landlord that they wished to end the tenancy. They did so on March 31, 2020 for the end of tenancy date of April 30, 2020. They met together to inspect the unit on May 1, 2020. The tenant provided that the landlord stated they needed their partner to go through the unit carefully and check on details – their partner did not attend on May 1, 2020. The tenant stated: “The landlord was focused on the issue that he could keep [the security deposit] and promised to give it back.”

The tenant provided a copy of the note dated May 1, 2020 written by the landlord. It states: “. . . tenant amt deposit for \$425.00 . . . will be held for ten days. . . subject to check no damage will sent to you by check.” The landlord confirmed that they provided this note to the tenant. The condition in place was ‘no damage to the unit’.

The landlord provided that they found damage after this. They provided pictures for evidence in this hearing. They stated they “kept the deposit” because of paint scratches on wall. There was a new oven in place at the start of the tenancy; however, at the end the oven had extensive stains. They provided pictures to show these issues. They stated they called the tenant to inform them of this; however, the tenant stated they did not receive a call.

In the hearing the tenant stated they provided their forwarding address to the landlord via text message. This was for the purpose of repayment of the initial security deposit amount of \$425.00. On May 15, 2020, they sent the form RTB-47 ‘Tenant’s Notice of Forwarding Address’ to the landlord directly via registered mail. The landlord maintains they did not receive this form; the only document they received was the notice of this hearing.

To provide proof they gave the landlord their address, the tenant submitted form RTB-41, which they completed on May 16, 2020. A witness signed the statement to state they left the forwarding address in the mail box; however, the description space states “Address text message.” On the form itself, the tenant states they sent the forwarding address by registered mail; however, there is no receipt or tracking information as specified on the form.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant’s forwarding address in writing, the landlord must

repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

In order for the tenants to meet the requirement that they provided their forwarding address in writing, there must be proof that there was a written document with that information conveyed. They must have served that document pursuant to section 88 – that is in person, by mail, left at the place or address of business, or attached to the landlord's door. This does not arbitrarily preclude text messages via phone or emails; I can consider these an alternate method of service if there is some proof of corroboration that the landlord received the information.

I am not satisfied the tenant provided their forwarding address in the method prescribed by the *Act*. I make this finding for the following reasons:

- the form RTB-41 contains conflicting information. Page 1 indicates the tenant sent the information by registered mail. Page 2, however, has the witness state this was served by text message, then indicates it was left "in the mail box or mail slot as described in Special Details". These indications on page 2 do not match. I am not satisfied of either of these methods of service. Additionally, the tenant stated they used registered mail, but did not provide the receipt or printed tracking report as the form specifies.
- The tenant did not provide an accurate Canada Post Registered Mail tracking number in the hearing and did not submit a copy of that number into evidence. This means there is no accurate method of tracking that post information in order to verify that the landlord received information sent by the tenant.
- The tenant's statement that they sent a text message – without an image or proof thereof – is not sufficient evidence to establish that they in fact did send their address information to the landlord.

The text method is not a prescribed method as per section 88 of the *Act*. The evidence from the tenant otherwise is inconsistent on the method they used to convey address information. This gives credence to the landlord's statement that they did not receive forwarding address from the tenant. As such, I am not satisfied that the landlord received the forwarding address *in writing* as specified in section 38(1). By finding the landlord was not provided with the forwarding address, there is no obligation for the landlord to either repay the deposits or claim against them. As such, I find the tenant's application for the return of the deposits is premature.

Conclusion

I dismiss the tenant's application to retrieve the security deposit for the reasons outlined above. I grant the tenant leave to reapply until such time as they have provided their forwarding address or can provide sufficient evidence to establish the landlord has received the address.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 16, 2020

Residential Tenancy Branch