



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on March 8, 2021 (the "Application"). The Tenant 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
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the Landlord acknowledged receipt of the application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were 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.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on December 1, 2019. During the tenancy, the Tenant was required to pay rent in the amount of \$2,400.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,200.00 which the Landlord continues to hold. The Tenancy ended on September 30, 2020. The Tenant provided a copy of the tenancy agreement in support.

The Tenant is claiming for double the return of his security deposit as the Landlord has not yet returned any portion of the security deposit. The Tenant stated that he served the Landlord with his forwarding address in writing on November 1, 2020 by placing it on the front door of the residential apartment building. Also, the Tenant stated that he mailed a copy to the Landlord by sending it to the dispute address. Lastly, the Tenant stated that he placed a copy of his forwarding address under a secured door at the rental property. The Landlord stated that he has not yet received a copy of 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 a copy of the tenancy agreement between the Tenant and the Landlord. I find that the Landlord has provided his address for service in the tenancy agreement. During the hearing, the Tenant confirmed that he did not send his forwarding address to the Landlord's address for service.

I find that posting the forwarding address to the front door of the residential apartment building, placing it under a door that is not the address for service, or mailing it to the dispute address where the Landlord doesn't reside is not sufficient to find that the Landlord is likely to have received the Tenant's forwarding address.

In light of the above, I find that the Tenant did not adequately serve the Landlord with their forwarding address in writing in accordance with Section 38(1) of the *Act*. Therefore, I dismiss the Tenants' Application with leave to reapply.

Section 39 of the *Act* establishes that it is the Tenants 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.

During the hearing, the Landlord confirmed his updated address for service with the Tenant. The Tenant confirmed receipt. As such, the Tenant is at liberty to re-serve his forwarding address to the Landlord's address for service which is listed on the cover page of this decision. It is suggested that this be done by Canada Post registered mail.

Conclusion

The Tenant provided insufficient evidence to demonstrate that they served their forwarding address to the Landlord in writing to the Landlord's address for service as indicated in the tenancy agreement. The Tenant's Application for the return of their security 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: July 27, 2021

Residential Tenancy Branch