



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 scheduled for 1:30 p.m. on August 12, 2021, via teleconference call, to deal with a tenant's application for return of the security deposit.

At the commencement of the hearing, the tenant appeared. The tenant was affirmed and ordered to not make an unofficial recording of the hearing.

Since the landlord was not in attendance, I explored service of hearing materials upon the landlord.

The tenant submitted that she sent the proceeding package to the landlord via registered mail on March 19 2021 at the landlord's service address that appears on the tenancy agreement; however, the registered mail was returned as unclaimed. The tenant testified that after the registered mail was returned to her, she had a friend deliver it to the landlord's residence and she witnessed her friend leaving the package at the landlord's front door on April 17, 2021. The tenant provided an image of the registered mail envelope that was returned, including the tracking number, and the tenancy agreement as proof of service. In keeping with section 90 of the Act, a party cannot avoid service by refusing to accept or pick up their mail and I deemed the landlord sufficiently served with the registered mail five days after mailing and I continued to hear from the tenant without the landlord present.

At approximately 2:18 p.m. the landlord connected to the teleconference call. The landlord confirmed she had received the hearing materials left at her door. The landlord stated she was late for the hearing because she had been waiting on a delivery of a bed for her mother. I informed the landlord that I had been hearing from the tenant for 48 minutes and I would not start over but I would confirm some key facts with her before making my decision.

The tenant requested her claim be amended to add other losses. I denied the tenant's request as the tenant did not submit and serve an Amendment to put the landlord on notice that other matters were being claimed and would be addressed during this hearing. The tenant was informed that she may make another Application for Dispute Resolution if she seeks other damages or loss from the landlord.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit?

Background and Evidence

It was undisputed that the tenancy started on February 1, 2020 and the tenant paid a security deposit of \$1200.00. The tenant was required to pay rent of \$2400.00 on the first day of every month. The tenancy was set to end on March 15, 2021.

The tenant testified that she had vacated the majority of her possessions on March 12, 2021 but returned to the property on March 14, 2021 to remove the remainder of her belongings and clean the rental unit. When she arrived, the landlord and several other individuals were at the rental unit and a dispute ensued between the parties. The tenant departed with the understanding the landlord would not be returning the security deposit so later that day, on March 14, 2021, the tenant filed this Application for Dispute Resolution seeking return of the security deposit.

The tenant testified that she provided her forwarding address to the landlord in a letter that she sent to the landlord via email on March 15, 2021. The tenant testified that the landlord responded to the email by sending her receipts. The landlord acknowledged to me during the hearing that she received the tenant's email containing the tenant's forwarding address.

I noted that when the tenant completed her Application for Dispute Resolution and mailed it to the landlord, it contained a different service address for the tenant. The tenant confirmed that she wrote the wrong address on the Application for Dispute Resolution and that her correct mailing address is the address provided in the email she sent to the landlord on March 15, 2021.

The parties provided consistent testimony that the tenant did not authorize the landlord to deduct or withhold a specific amount from the security deposit and the landlord has not refunded any portion of the security deposit to the tenant.

The landlord stated that she spent the security deposit on cleaning and repairs; however, the landlord did not file a Landlord's Application for Dispute Resolution seeking authorization to retain the security deposit.

During the hearing, I orally provided the parties with my findings, that the tenant's Application for Dispute Resolution was premature since she filed before she had provided a forwarding address, in writing, to the landlord and I would dismiss the tenant's Application for Dispute Resolution with leave to reapply. I further stated that should the landlord fail to comply with my order, as set out below, the tenant may re-apply and seek doubling of the security deposit. I ordered the landlord to take action to comply with section 38(1) of the Act within 15 days of the date of hearing by either: refunding the full security deposit to the tenant, getting the tenant's written consent to make a specific deduction from the security deposit and refund the balance, or filing a Landlord's Application for Dispute Resolution to make a claim against the security deposit. The parties indicated they understood and the teleconference call was ended.

Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenant filed her Application for Dispute Resolution before giving her forwarding address to the landlord in writing. As such, the tenant's Application for Dispute Resolution was filed pre-maturely and out of order. In keeping with Residential Tenancy Branch Practice Directive 2015 – 01, I dismiss the tenant's Application for Dispute Resolution with leave to reapply.

Also in keeping with Residential Tenancy Branch Practice Directive 2015 – 01, the landlord was informed that as of the date of the hearing, August 12, 2021, the landlord is considered to be in receipt of the tenant's forwarding address, as provided in the email sent on March 15, 2021; and, the landlord has 15 days from August 12, 2021 to

comply with section 38 of the Act by: refunding the security deposit to the tenant, getting the tenant's written consent to make deductions from the security deposit and refunding the balance, or filing a Landlord's Application for Dispute Resolution to make a claim against the security deposit.

Should the landlord decide to file a Landlord's Application for Dispute Resolution, the date a party is considered to have filed an Application for Dispute Resolution is the date the Application for Dispute Resolution is submitted to the Residential Tenancy Branch and the filing fee is paid.

Should the landlord fail to comply with the above, the tenant is at liberty to reapply and seek return of double the security deposit.

Conclusion

The tenant's application was filed pre-maturely and dismissed with leave to reapply.

As of August 12, 2021, the landlord is considered in receipt of the tenant's forwarding address, in writing, and has 15 days from August 12, 2021 to comply with section 38 of the Act.

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 17, 2021

Residential Tenancy Branch