



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

The Tenant applies for the return of his security deposit and pet damage deposit pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”) and for return of his filing fee.

The Tenant’s application was originally filed as a direct request and was adjourned to a participatory hearing following the interim reasons of the adjudicator dated November 4, 2021.

A.K. appeared as Tenant. P.X. appeared as Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenant was vague and incapable of providing a clear response on how or when he served the Landlord with the Notice of Dispute Resolution for the reconvened hearing or the Tenant’s evidence. The Tenant indicates it was sent by way of email or registered mail, though provides a tracking number for a package that he says was sent on October 10, 2021. The Notice of Dispute Resolution for the hearing was provided to the Tenant on November 4, 2021. The Tenant provided the Residential Tenancy Branch a tracking receipt that was dated November 7, 2021, though failed to confirm that this was registered mail package was sent to the Landlord or that it contained his application materials.

The Landlord acknowledges receipt of the Notice of Dispute Resolution for the present hearing and a portion of the Tenant’s evidence, being the tenancy agreement, form RTB-40, and form RTB-41. The Landlord indicated that he received the Notice of

Dispute Resolution from the Residential Tenancy Branch directly in November 2021. I have reviewed the Residential Tenancy Branch's communication history with the parties on this matter. No Notice of Dispute Resolution was sent to the Landlord in November 2021 and the Residential Tenancy Branch does not serve evidence on the parties, as that is the responsibility of the participants.

Pursuant to Rule 3.5 of the Rules of Procedure, the Tenant applicant must demonstrate service of his application materials. Despite the disorganized conduct of the parties in this matter, I am satisfied that the Landlord received the Notice of Dispute Resolution for the participatory hearing and the Tenant's evidence, specifically the tenancy agreement, form RTB-40, and form RTB-41 due to his acknowledged receipt of the same in November 2021.

Pursuant to s. 71(2) of the *Act*, I find that the Landlord was sufficiently served with the Notice of Dispute Resolution for the participatory hearing and the Tenant's evidence, specifically the tenancy agreement, form RTB-40, and form RTB-41. The other evidence provided by the Tenant to the Residential Tenancy Branch is not included in the record as the Tenant was unable to demonstrate that these documents were served and the Landlord did not acknowledge receiving the other documents.

The Landlord advises that he served responding evidence on the Tenant by way of email sent on March 7, 2022 and registered mail sent on the same date. Rule 3.15 of the Rules of Procedure requires an application respondent to serve their evidence as soon as possible and must be received by the applicant at least 7 days before the hearing. In this instance, the registered mail was not received within 7-days of the hearing.

The Tenant confirmed receipt of the Landlord's response evidence by way of email but raised objection to this method of service as it is not an approved form of service between the parties. The Landlord was unable to demonstrate that email was an approved form of service as contemplated by s. 43 of the Regulations.

As email is not an approved form of service and in the face of the Tenant's specific objection to the inclusion of the evidence, I find that the Landlord has failed to serve the responding evidence as contemplated by s. 89 of the *Act* and within the prescribed timeline set by Rule 3.15. Accordingly, the Landlord's documents are not admitted into evidence as they were not properly served.

Issue(s) to be Decided

- 1) Is the Tenant entitled to the return of his security deposit and pet damage deposit?
- 2) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took possession of the rental unit on December 1, 2017 and vacated the rental unit on November 30, 2019.
- The Tenant paid a security deposit of \$600.00 and a pet damage deposit of \$500.00.
- When rent was paid, it was payable in the amount of \$1,250.00 per month, though this was reduced to \$1,200.00 per month.

A copy of the written tenancy agreement was put into evidence by the Tenant.

The parties confirmed that they conducted an informal move-in and move-out inspection, which included a walkthrough and a discussion on the state of the rental unit. The Landlord admits that no written move-in or move-out condition inspection report was prepared.

The Tenant indicates that he sent the Landlord his forwarding address by way of mail and email sent on February 5, 2020. The Tenant's RTB-41, which is a proof of service form for the forwarding address, indicates that forwarding address was provided on January 13, 2021, that it was provided at the time of the move-out inspection and that it was provided in an email. The Tenant provides no evidence to verify that mail had been sent to the Landlord in January or February 2020 which included his forwarding address.

The Landlord acknowledges receiving the Tenant's forwarding address on January 14, 2020 by way of email. When the Landlord indicated this date, the Tenant resiled from

his earlier statement and confirmed that he had sent the Landlord his forwarding address by way of email on January 13, 2020 and that the February 5, 2020 was incorrect.

The Landlord advises that he responded to the Tenant's email with a list of issues, including the cleanliness of the rental unit, damages that are said to have been caused by the Tenant, and certain issues with respect to rent. The Landlord further advises that the email requested that certain deductions from the security deposit and the pet damage deposit be made. The Landlord admits that he did not file an application with the Residential Tenancy Branch claiming against the security deposit.

The Tenant indicated that the Landlord had not returned any of his pet damage deposit or security deposit. The Tenant further indicates that he did not consent to the Landlord withholding the same.

The Landlord confirmed that none of the security deposit or pet damage deposit was returned to the Tenant. He further indicates that he did not do so as the Tenant did not provide information for an e-transfer. The Landlord admitted that the forwarding address including the Tenant's mailing address.

Analysis

The Tenant seeks the return of his security deposit and pet damage deposit.

Section 38(1) of the *Act* sets out that a landlord must either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch within 15-days of the tenancy ending or receiving the Tenant's forwarding address in writing, whichever is later. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

At the hearing, the Tenant indicates he sent the Landlord his forwarding address by way of email and mail, with the email sent on January 13, 2020. The Tenant's form RTB-40 indicates that the email was sent on January 13, 2021 and that he told the Landlord during the move-out inspection. At the hearing, the Tenant did not elaborate on whether he provided his forwarding address in writing during the move-out inspection and provides no proof of doing so. As there is no written move-out inspection report, I cannot verify if the Tenant had provided his forwarding address in writing on this

occasion. The Tenant further indicated that he mailed his forwarding address to the Landlord. Again, the Tenant provides no proof of doing so.

The Landlord acknowledges receipt of the forwarding address on January 14, 2020 by way of email and made no mention of receiving the forwarding address in writing during the move-out inspection or receiving a letter.

In the face of the conflicting information and the Tenant's lack of evidence, I accept that the Tenant sent an email on January 13, 2020 based on the Landlord's acknowledged receipt of the same at that time. I find that the Tenant has failed to demonstrate service of his forwarding address through the other methods mentioned in his submissions and his evidence.

Section 88 governs the general service of documents under the *Act*. Email can be used as a method of service, though it must be agreed to by the parties in writing beforehand as contemplated by s. 43 of the Regulations. However, the Tenant admits that email was not an approved form of service between the parties. I would further note that the revisions to the Regulations permitting service by way of email were brought into force on March 23, 2021, which would prevent service by email as occurred here in any event.

This is the Tenant's application, and he bears the burden of proving his claim. I find that the Tenant has failed to establish that he provided the Landlord with his forwarding address in writing in a method permitted under s. 88 of the *Act*. The method chosen by the Tenant, being the email of January 13, 2020, was not permitted under s. 88 at the relevant time and was not, in any event, an approved form of service as contemplated by the revisions set out under the Regulations. Indeed, the Tenant objected to service by way of email at the hearing.

Section 39 of the *Act* provides that if a tenant does not give a landlord their forwarding address in writing within one-year of 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 and pet damage deposit is extinguished.

It is undisputed by the parties that the tenancy ended on November 30, 2019. This means the Tenant had until November 30, 2020 to provide the Landlord with his forwarding address in writing. The only evidence that this was done at all was by way of email sent on January 13, 2020, which as mentioned above is not an approved form of

service under s. 88 and not one I am willing to accept under the circumstances. I find that the Tenant failed to provide the Landlord with his forwarding address in writing in a method contemplated by s. 88 as required by sections 38(1) and 39 of the *Act*.

Accordingly, I find that the Tenant's right to the return of the security deposit and the pet damage deposit is extinguished, and the Landlord may keep both the security deposit and pet damage deposit as provided by s. 39 of the *Act*. The Tenant's application is, therefore, dismissed. The Landlord may retain the security deposit of \$600.00 and the pet damage deposit of \$500.00.

Conclusion

The Tenant failed to serve the Landlord with his forwarding address, in writing, in a method contemplated under s. 88 of the *Act* within one-year of the tenancy ending. As the Tenant failed to serve the Landlord with his forwarding address within one-year as required by s. 39 of the *Act*, the Tenant's right to the return of the security deposit and pet damage deposit is extinguished. The Landlord may retain both the security deposit and the pet damage deposit. The Tenant's application is dismissed.

As the Tenant was unsuccessful in his application, I find that he is not entitled to the return of his filing fee under s. 72 of the *Act*. The Tenant shall bear the expense of his filing fee.

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: March 16, 2022

Residential Tenancy Branch