



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on October 16, 2021. The tenant had provided tracking information from Canada Post to support this. In accordance with sections 89 and 90 of the Act, I find the landlord has been deemed served five days after mailing on October 21, 2021. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on July 14, 2020 and ended on April 14, 2021. The tenant was obligated to pay \$900.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$450.00 security deposit. The tenant testified that there wasn't a signed tenancy agreement between the parties. The tenant testified that he provided his forwarding address by leaving it on his desk in the room that he rented. The tenant requests the return of his \$450.00 security deposit and \$100.00 filing fee for this application.

Analysis

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

The tenant testified that he left a letter in the room that he rented with his forwarding address on it, however his documentary evidence states he personally served the landlord with it. In addition, the tenant has noted different dates of serving the forwarding address and when it occurred on the Proof of Service document submitted. The tenant was unable to provide sufficient evidence to support when and if that was done. As the tenant was unable to provide sufficient evidence to support that the landlord was provided with his forwarding address in writing, I hereby dismiss this portion of his application with leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's application to recover the filing fee is dismissed without leave to reapply. The remaining portion of the tenant's application 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: April 28, 2022

Residential Tenancy Branch