



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On October 24, 2021 the Landlord submitted an Application for Dispute Resolution (the "Application"), seeking relief pursuant to the *Residential Tenancy Act* (the "Act") for the following:

- a monetary for damage, compensation, or loss;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30PM on May 30, 2022 as a teleconference hearing. Only the Tenant attended and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 13 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Tenant and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Tenant and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 1:30PM on May 30, 2022.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither of the Landlord nor a representative acting on their behalf attended the hearing to present any evidence or

testimony for my consideration regarding the Landlord's Application, I therefore dismiss the Landlord's Application in its entirety without leave to reapply.

As the Landlord continues to hold the Tenant's security deposit I must consider if the Tenant is entitled to the return of their deposit, given the Landlord's Application to retain the deposit was dismissed without leave to reapply.

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*?

Background and Evidence

The Tenant stated that the tenancy was meant to start on November 1, 2022 however, the Tenant did not occupy the rental unit and ended the tenancy before it commenced. The Tenant stated that she had paid the Landlord a security deposit in the amount of \$950.00 which the Landlord continues to hold. The Tenant stated that she provided the Landlord with her forwarding address as it was included in a previous dispute resolution application that the Tenant had submitted in relation to the return of her security deposit.

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;

The Tenant testified that her forwarding address was served to the Landlord as part of a previous Notice of Hearing package.

According to the Residential Tenancy Branch Practice Directive (the "Practice Directive"); A forwarding address provided by the Tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

In light of the above, I find that the Tenant did not adequately serve the Landlord with her forwarding address in writing in accordance with Section 38(1) of the *Act*. As such, I find that the Tenant is not yet entitled to the return of her security deposit. The Tenant is required to provide the Landlord with their forwarding address in writing. It is suggested that this be done by Canada Post registered mail.

Section 39 of the *Act* establishes that it is the Tenant's 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 Deposits and the Tenant's right to the Deposits is extinguished.

Conclusion

No one attended the hearing for the Landlord. The Landlord's Application is dismissed without leave to reapply. The Tenant is not yet entitled to the return of her security deposit as she has not yet provided the Landlord with her forwarding address in writing.

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: May 30, 2022

Residential Tenancy Branch