



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL, FFL**

Introduction

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

- a monetary order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord gave undisputed evidence on the following facts. This tenancy began on August 1, 2018. Monthly rent was \$2,700.00 payable on the first of each month. A security deposit of \$1,350.00 and pet damage deposit of \$200.00 were collected by the landlord at the start of tenancy. The landlord was authorized to use \$1,100.00 of the deposit to offset a monetary award in a previous decision under the file number on the first page of this decision. The landlord holds the balance of \$150.00 security deposit and \$200.00 pet damage deposit. The tenancy ended on September 30, 2019 in accordance with an Order of Possession issued to the landlord in the previous decision.

The tenant has not provided a forwarding address to the landlord. The landlord testified that they found information about the tenant's workplace and served them with the present application and evidence by registered mail sent to what they believe is the tenant's work address. The landlord provided a copy of the Canada Post online tracking information as evidence of service.

Analysis

Pursuant to section 39 of the *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy the landlord may keep the deposit and the right of the tenant to a return is extinguished.

I accept the evidence of the landlord that this tenancy ended on September 30, 2019 and the tenant has not provided a forwarding address as at the date of the hearing, May 13, 2022. Therefore, as it has been more than one year since the end of the tenancy and the tenant has not provided a forwarding address the landlord is entitled to retain the full balance of the security and pet damage deposit in the combined amount of \$350.00.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;*

(e) *as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlord testified that as the tenant had not provided a forwarding address, they have served the tenant at an address which they believe to be their place of employment. I find that a work address is not an address at which a person resides as required under the Act. The landlord provided little evidence of how they found this address or the reasons why they believed the tenant could be served at this location.

Furthermore, while the landlord provided Canada Post tracking information which shows the hearing package was received, I am not satisfied that the individual who was served in this manner is the tenant for this tenancy. In the absence of the tenant at the hearing or cogent, persuasive evidence by the landlord I am unable to conclude that the person served by the landlord is the tenant and not someone who shares a name but is an unrelated individual.

I am not satisfied that the tenant has been served in a manner consistent with the Act or at all. I find that the tenant was not properly served with the application for dispute resolution and consequently dismiss the landlord's application with leave to reapply.

Conclusion

The landlord's application is dismissed with leave to reapply.

The landlord is authorized to retain the full balance of the security and pet damage deposit for this tenancy.

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 13, 2022

Residential Tenancy Branch