



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, reconvened from an *ex parte* Direct Request proceeding, dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the Act, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given a full opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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

The tenants confirmed receipt of the landlord's evidentiary materials.

Despite attending the hearing and stating they had knowledge of the tenants' present application the landlord disputed being served with the tenant's materials. The tenants gave evidence that the landlord was served with their materials by registered mail sent

on November 29, 2021. The tenants provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find the landlord deemed served with the tenants' materials on December 4, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act. Pursuant to Policy Guideline 12 the wilful failure of a party to accept or pick up materials served by registered mail does not rebut the deeming provisions of the Act. In any event I find both parties sufficiently served with all materials pursuant to section 71 of the Act.

Issue(s) to be Decided

Are the tenants entitled to relief as claimed?

Background and Evidence

The parties agree on the following facts. This periodic tenancy originally began on February 1, 2015. The monthly rent for this tenancy was \$1,307.00 payable on the first of each month. A security deposit of \$612.50 was paid at the start of the tenancy and is still held by the landlord.

The tenancy ended on December 31, 2019. The tenants provided their forwarding address in a letter dated December 31, 2020 which was left in the landlord's mailbox on that date. The landlord confirmed receipt of the forwarding address.

Analysis

Section 88(f) provides that a document may be served on a person by leaving a copy in a mailbox or mail slot at the address at which a person resides or carries on business as a landlord.

Section 90(d) sets out that a document served by leaving a copy in a mailbox or mail slot is deemed received on the third day after it is left.

In the present case the parties agree that the letter providing a forwarding address dated December 31, 2020 was left in the mailbox on that date. As such, I find the landlord is deemed served with the tenants' forwarding address on January 3, 2021, three days after it was left in the mailbox.

Section 39 of the Act sets out that a landlord may retain the security deposit and the right of a tenant to the return of the deposit is extinguished if a tenant does not give the landlord a forwarding address in writing within one year after the end of the tenancy.

In the present circumstances I accept the evidence of the parties that the tenancy ended on December 31, 2019. As set out above I find the date the landlord is deemed to have received the forwarding address is January 3, 2021. I find that the tenants did not provide a forwarding address in writing to the landlord within one year of the end of the tenancy and therefore, pursuant to section 39 have extinguished their right to a return of the deposit. I find the landlord is entitled to retain the full amount of the deposit in accordance with the *Act*.

Conclusion

The tenants' application is dismissed in its entirety without 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: June 24, 2022

Residential Tenancy Branch