



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 was reconvened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an order for the return of the Tenant's security and/or pet damage deposit(s) pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord and the Tenant attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord by Priority Post but she could not remember the date of service. Although the Tenant did not serve the NDRP by a method specified by section 89(2) of the Act, the Landlord acknowledged he received the NDRP sometime in May. As such, I find the Landlord was sufficiently served on the Landlord pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Service of Tenant’s Evidence on Landlord

The Tenant stated she served her evidence on the Landlord with the NDRP. The Landlord stated there was no evidence enclosed with the NDRP. I find, on a balance of probabilities, that the Tenant’s evidence was not served on the Landlord. As such, I will not admit the Tenant’s evidence for this proceeding.

Issues to be Decided

Is the Tenant entitled to:

- the return of her deposit?
- recover the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on July 1, 2009, on a month-to-month basis, with rent of \$1,400.00 per month. The Landlord acknowledged the Tenant paid him a security deposit of \$700.00 and that he was holding it in trust for the Tenant. The parties agreed the tenancy ended on February 28, 2022 when the Tenant returned the keys to the rental unit to the Landlord.

The Tenant stated she served the Landlord with her forwarding address by text message. The Landlord stated he did not receive a text message from the Tenant with her forwarding address.

The Landlord claimed there were damages to the rental unit. The Landlord stated that move-in and move-out inspections were not scheduled and performed with the Tenant.

Analysis

Sections 38(1) and 39 of the Act state:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The Tenant stated she served the Landlord with her forwarding address by text message. The Landlord stated he did not receive a text message with the Tenant's address. I note that serving documents by text message is not a recognized method of service under the Act unless the party has obtained an order for substituted service from the Residential Tenancy Branch. I find, on a balance of probabilities, that the Landlord was not served with the Tenant's forwarding address in writing. As the Tenant did not serve the Landlord with a written notice with her forwarding address for the return of her deposit, the Landlord was not required to comply with the provisions of section 38(1). Accordingly, the Landlord was not required to return the security deposit to the Tenant or to make an application for dispute resolution to claim against the security deposit. As such, I dismiss the Tenant's claim for the return of the deposit with

leave to reapply. The Tenant has the option of correctly complying with the requirements of the Act to seek the return of her security deposit.

As the Tenant was unsuccessful in the Application, I dismiss her claim for recovery of the filing fee for the Application from the Landlord.

It is recommended the parties call the Residential Tenancy Branch Contact Centre to clarify their rights and the procedures regarding return and handling of a security deposit. It is also recommended that the parties refer to *Residential Tenancy Branch Policy Guideline 1* which provides information on matters such as a Tenant putting up nails and picture hangers. The parties are encouraged to resolve their dispute regarding the security deposit between themselves before making an application for dispute resolution.

Conclusion

The 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: January 12, 2023

Residential Tenancy Branch