



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the security deposit and for the recovery of the filing fee.

The tenant stated that she served the notice of hearing on the landlord by email to the email address that she used, to send her rent to the landlord. The landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Was the landlord properly served with the notice of hearing and the tenant's application? If so, is the tenant entitled to a monetary order for the return of the security deposit?

Background and Evidence

The tenancy began on May 15, 2019, and ended on December 15, 2022. The monthly rent was \$1,700.00 payable on the 15th of the month. The tenancy agreement indicated that the tenant had paid a security deposit of \$775.00.

The tenant testified that on December 11, 2022, the landlord conducted a move out inspection of the rental unit and advised the tenant that she could move out as everything was in order. The tenant stated that when she asked the landlord for the return of the security deposit, the landlord informed her that she had not paid a security deposit. The landlord refused to take a forwarding address from the tenant.

The tenant stated that based on the above she was not provided an opportunity to give the landlord her forwarding address in writing.

Analysis

Service of the Notice of hearing package:

Section 89 (1) of the *Residential Tenancy Act* entitled "How to Give or Serve Documents".

Section 89(1) states

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents*].

However, pursuant to Residential Tenancy Regulations section 43 (2), a notice of hearing package *may be given to a person by emailing a copy to an email address provided as an address for service by the person.*

The tenant agreed that she did not have any document that would indicate that the landlord provided her with an email address for service.

The purpose of serving a notice of hearing and evidence package under the Legislation is to notify the person being served of matters relating to arbitration. The landlord is entitled to have an opportunity to be heard at the hearing. Based on the testimony of the tenant, I am not satisfied that the notice of hearing was served in accordance with section 88 of the *Act*.

Return of the security deposit:

Section 38(1) of the *Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the tenant testified that the landlord refused to accept the tenant's forwarding address, saying that the tenant had not paid a deposit. The tenant is now aware that she must provide the landlord with her forwarding address in writing and allow the landlord 15 days to return the security deposit or make application to keep it. The tenant is also aware of other means of serving the landlord with her forwarding address other than in person. Based on the testimony of the tenant, I find that she deserves an opportunity to serve the landlord with her forwarding address. Accordingly, I dismiss her application with leave to reapply.

Conclusion

The tenant has not proven proper service of the notice of hearing package to the landlord.

The tenant did not provide the landlord with her forwarding address in writing and therefore 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: February 07, 2023

Residential Tenancy Branch