



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RPP, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for an order requiring the landlord to return their personal property and recovery of the cost of the filing fee.

The tenants attended the hearing; however, the landlord did not attend.

The tenants gave documentary evidence and testimony that they served the landlord with their application and Notice of Hearing by registered mail. The Canada Post receipt containing the tracking number was filed in evidence.

I accept the tenants' evidence that the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenants were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the tenant's submissions and or arguments are reproduced here.

Preliminary and Procedural Matters-

Although the tenants applied for an order requiring the landlord to return their personal property, the tenants' application contained a request for a return of their security

deposit. I therefore found it appropriate to proceed on that issue rather than deal with their original request in the application. I find the landlord would have been aware of the tenants' actual claim, by the description in their application.

Issue(s) to be Decided

Are the tenants entitled to a monetary order against the landlord and recovery of the cost of the filing fee?

Background and Evidence

The tenants' evidence was that the tenancy began on September 1, 2022, ended on October 31, 2022, the monthly rent was \$2,950, and the security deposit paid to the landlord was \$2,950.

In response to my inquiry, the tenants provided no clear answer as to how they sent the landlord their written forwarding address. I could not determine whether the landlord was given the tenants' written forwarding address by email, or in the tenants' application, or at all. No documentary evidence was provided on this point.

Analysis

Based on the relevant evidence and on the balance of probabilities, I find the following.

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within **15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy.**

In this case, the tenants failed to provide sufficient evidence that the landlord was served with the tenants' written forwarding address prior to making their application.

Pursuant to paragraph 38(1)(b), as the tenants have not provided their forwarding address in writing to the landlord, the landlord's obligation to return the deposit has not yet been triggered.

The tenants are not entitled to return of their security deposit until the written forwarding address has been provided to the landlord.

I therefore **dismiss** the tenants' application in full, **with leave to reapply**.

Section 88 of the Act provides that documents, the written forwarding address in this case, that are required to be served on another party, the landlord in this case, **must** be given or served in the ways listed in this section of the Act. Email communication is not an approved method of delivery of those documents under the Act, unless the landlord has agreed to be served documents in this manner, or unless an applicant applies for an order for substituted service.

The tenants should be aware of section 39 of the Act which states that 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 security deposit and the right of the tenant to the return of the security deposit is extinguished.

Conclusion

The tenants' 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 16, 2023

Residential Tenancy Branch