



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- return of the Tenant's security deposit and/or pet damage deposit in the amount of \$750.00 pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. During the hearing, the Tenant was assisted by advocate JM.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 1:57 pm in order to enable the Landlord to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant, JM, and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant testified that she sent the notice of dispute resolution proceeding package (the "NDRP Package") to the Landlord via registered mail on June 14, 2022. The Tenant provided the tracking number for this package (the first of two tracking numbers referenced on the cover page of this decision). I find the Landlord was served with the NDRP Package in accordance with section 89(1)(c) of the Act. Pursuant to section

90(a) of the Act, I find the Landlord is deemed to have received the NDRP Package on the fifth day after mailing, or June 19, 2022.

The Tenant testified that she sent her documentary evidence to the Landlord via registered mail on January 24, 2023 (tracking number also referenced on the cover page of this decision). I find the Landlord was served with the Tenant's documentary evidence in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Landlord is deemed to have received the Tenant's documentary evidence on the fifth day after mailing, or January 29, 2023.

Having found the Landlord to be duly served with notice of this hearing, I directed that the hearing continue in the absence of the Landlord.

Issues to be Decided

1. Is the Tenant entitled to return of the security deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

This tenancy commenced in March 2012. The parties did not have a written tenancy agreement. The Tenant stated that rent was initially \$700.00 per month, and the Tenant had paid a security deposit of \$350.00. The Tenant stated that by the end of the tenancy, rent was \$850.00 per month.

The Tenant stated that there was a walkthrough at the start of the tenancy but the parties did not complete any condition inspection reports.

The Tenant stated that the Landlord issued a two month notice to end tenancy for landlord's use of property which required the Tenant to vacate the rental unit by April 1, 2022.

The Tenant stated that on April 4, 2022, the Landlord changed the locks to the rental unit while the Tenant and her family were still trying to help clean out the rental unit. The Tenant stated that she left the letter with her forwarding address for the Landlord on the kitchen counter. The Tenant stated that the Landlord was there while she was there, and then said he would be back in an hour or so. According to the Tenant, after the Landlord was gone, she left the rental unit unlocked with the letter on the counter. The

Tenant stated that the Landlord would have received that letter if he did return as he said.

The Tenant's evidence includes a forwarding address letter dated May 2, 2022. During the hearing, the Tenant stated that this was not a copy of the letter she had dropped off. The Tenant was unsure why this letter is dated May 2, 2022. The Tenant stated that the forwarding address in this letter was a temporary address different from the Tenant's current address.

JM stated that the letter was from the Tenant's file where a previous advocate assisting the Tenant had created the document and the Tenant was supposed to pick it up.

The Tenant stated that aside from some text correspondence between her husband and the Landlord about cleaning the backyard, there was no communication or response from the Landlord.

Analysis

1. Is the Tenant entitled to return of the security deposit?

Section 38(1) of the Act states that within 15 days of the later of (a) receiving the tenant's forwarding address in writing, and (b) the date the tenant moves out of the rental unit, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

Based on the Tenant's undisputed evidence, I find the tenancy ended on April 1, 2022.

I find the Tenant's evidence is that on April 4, 2022, she left a forwarding address letter for the Landlord on the kitchen counter in the rental unit, after the Landlord had gone out and said he that he would return.

Section 88 of the Act provides the acceptable ways in which documents such as a forwarding address letter may be served on a person. These methods include:

- Leaving a copy with the person
- If the person is a landlord, leaving a copy with an agent of the landlord
- Sending a copy by registered mail or 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

- By leaving a copy at the person's address with an adult who apparently resides with the person
- By leaving a copy in a mailbox or mail slot for the address at which the person resides, or if the person is a landlord, at the address at which the person carries on business as a landlord

Based on the Tenant's testimony, I am unable to find that the Tenant had served the Landlord with her forwarding address in writing using one of the accepted methods of service under section 88 of the Act. Furthermore, I find there is insufficient evidence of communication from the Landlord acknowledging receipt of a forwarding address letter from the Tenant. I also find the Tenant did not submit a copy of the letter that was said to have been dropped off.

Under these circumstances, I am unable to conclude that the 15-day deadline for the Landlord under section 38(1) of the Act has been triggered.

Therefore, I dismiss the Tenant's claim for double the security deposit with leave to re-apply. The Tenant must serve the Landlord with her forwarding address in writing using one of the accepted methods under the section 88 of the Act and retain proof of service. If the Landlord does not return or claim against the security deposit within 15 days of being served with the Tenant's forwarding address, the Tenant may re-apply for double the security deposit.

Leave to re-apply does not extend any applicable time limits. For reference, section 39 of the Act 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.

2. Is the Tenant entitled to recover the filing fee?

The filing fee is a discretionary award issued by an arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the Tenant has not been successful at this time, I find the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Tenant's claim to return of the security deposit is dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limits.

The Tenant's claim for reimbursement of the filing fee is dismissed without leave to re-apply.

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: March 07, 2023

Residential Tenancy Branch