



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD-DR, FFT

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit plus applicable compensation 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 a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials originally submitted for this hearing, and that they were ready to proceed with the scheduled hearing.

Preliminary Issue– Additional Evidence submitted by the Tenant

On the day of the scheduled hearing, the tenant submitted additional evidence.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

I am not satisfied that the tenant had served this material on the landlord at least 14 days prior to the hearing date.

Rule 3.17 states the following:

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*].

I find that the tenant failed to establish how the additional evidence is new, and was not available at least 14 days prior to the hearing date. A respondent is entitled to know the case against them, and have sufficient time to respond.

I am not satisfied that the tenant has met the criteria for new and relevant evidence, nor did the tenant provide a valid reason for why this evidence was submitted late. I find that accepting this late evidence would be prejudicial to the landlord, who did not have a fair opportunity to review these materials prior to the hearing. For these reasons, the tenant's additional evidence that was submitted the day of the hearing will be excluded.

Issues(s) to be Decided

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to a monetary order for compensation?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on February 15, 2021 and ended on February 28, 2022. Monthly rent was set at \$2,495.00. The landlord had collected a security deposit in the amount of \$1,247.50, and continues to hold this deposit.

The tenant filed this application requesting that the landlord return their security deposit to them less the \$195.00 cleaning fee. The tenant is also requesting compensation for the failure of the landlord to return their deposit.

The tenant testified that that they had provided their forwarding address to the landlord in person on the day they had moved out, and also provided it to the landlord through the concierge, and by way of registered mail. The tracking number for the package was provided during the hearing ,and is noted on the cover page of this decision. The tenant's witness, TK, attended the hearing and testified that they were present when the forwarding address was provided to the landlord. TK testified that they had also sent a message to the landlord through text message. The tenant submitted copies of RTB Forms 47 and 41 to support this application.

The tenant confirmed their forwarding address during the hearing, which the tenant confirmed has not changed.

The landlord denies receiving the tenant's forwarding address, and called a witness during the hearing who testified that they were present on the day of move-out. The landlord's witness testified that no forwarding address was provided. The landlord also disputes having received a registered mail package from the tenant.

Analysis

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

The tenant testified in the hearing that they had provided their forwarding address to the landlord through multiple methods, which the landlord disputes.

In review of the evidence before me, I am not satisfied that the tenant had provided sufficient evidence to support that the landlord was served with the tenant's forwarding address.

I note that although the tenant did provide a tracking number for a package sent on June 10, 2022, the Canada Post website shows that the package was delivered on June 25, 2022 to an address that does match an address that is provided by the landlord. The address noted on the move-out inspection report shows an address in a completely different city. The address also does not match the landlord's address provided for this application. As the address does not match the landlord's address, and as I am unable to confirm the signature of the recipient (which requires that the correct postal code be provided), I am not satisfied that the tenant had provided sufficient evidence to support that the landlord was served with the tenant's forwarding address by registered mail.

I have also reviewed the copy of the Form 41 that was provided by the tenant. I note that although the tenant's witness TK did testify to observing the service of Form 47 and tenant's forwarding address on the landlord, I note that the copy of the Form 47 that was provided in evidence is incomplete. The section allocated for the "signature of person receiving the notice", is blank and unsigned by the landlord. As the Form 47 submitted is not properly signed, and in light of the disputed testimony, I am not satisfied that the testimony of the tenant and their witness sufficiently supports that the landlord was properly served with the tenant's forwarding address in person.

I further note that although the tenant testified that they had attempted to serve the landlord with their forwarding address through the concierge, the tenant did not provide any evidence from the concierge confirming this, nor did the concierge appear as a witness to confirm this. I am also not satisfied that the tenant had provided in evidence a copy of the text message showing the provision of the tenant's forwarding address to the landlord.

Lastly, in review of the move-out inspection report that was submitted by the tenant, I note that the tenant did not provide their forwarding address in the relevant section, but instead left it blank.

I note that pursuant to section 39 of the *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.”

In review of the evidence provided, I am not satisfied that the tenant had demonstrated provision of their forwarding address in writing in accordance with the *Act*. Accordingly, I dismiss the tenant’s application without leave to reapply.

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 was not successful in this application, the tenant must bear the cost of the filing fee.

Conclusion

The tenant’s entire application is dismissed 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: May 25, 2023

Residential Tenancy Branch