



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, FFT

Introduction and Preliminary Matters

On November 14, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 23, 2022, this hearing was scheduled to commence via teleconference at 9:30 AM on August 24, 2023.

The Landlord attended the hearing, with A.K. attending as an agent for the Landlord; however, the Tenant did not make an appearance at any time during the 17-minute teleconference.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 9:30 AM and monitored the teleconference until 9:47 AM. Only the Landlord and his agent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the aforementioned parties were the only other persons who had called into this teleconference.

As the burden of proof is on the Applicant to establish their claim, and as the Applicant did not attend the hearing, I dismiss the Tenant's Application for Dispute Resolution in its entirety.

As an aside, the Landlord advised that he was never provided with a forwarding address in writing.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and/or pet damage deposit at the end of the tenancy. Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Tenant may apply for double the deposits.

Given the Landlord's solemnly affirmed testimony that the Tenant never provided a forwarding address in writing, I find that the Tenant serving the Notice of Hearing package and Application with her forwarding address on it constitutes providing it in writing. The Landlord is put on notice that he now has the Tenant's forwarding address, and he must deal with the security deposit and pet damage deposit pursuant to Section 38 of the *Act*. The Landlord is deemed to have received this Decision **five** days after the date it was written and will have 15 days from that date to deal with the deposits accordingly.

As such, the Tenant's Application regarding the security deposit and pet damage deposit is dismissed with leave to reapply. If the Landlord does not deal with the deposits pursuant to Section 38 of the *Act* within 15 days of being deemed to have received this Decision, the Tenant can then re-apply for double, pursuant to the *Act*.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on above, I dismiss the Tenant's Application with leave to reapply. However, the Landlord is put on notice that he now has the Tenant's forwarding address and is deemed to have received this Decision **five** days after the date it was written. If the Landlord does not deal with the security deposit and pet damage deposit, pursuant to

Section 38 of the *Act*, within 15 days of being deemed to have received this Decision, the Tenant can then re-apply for double, pursuant to the *Act*.

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: August 24, 2023

Residential Tenancy Branch