



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on August 17, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Tenant stated she served the Landlord with her Notice of Dispute Resolution Proceeding but did not serve any evidence. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding. Since the Tenant failed to serve her evidence, I find it is not admissible and will not be considered.

The Tenant confirmed receipt of the Landlord's evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

Both parties agree that the Landlord collected and still holds a security and pet deposit, totalling \$800.00. The Landlord returned \$44.40, but holds the remaining amount.

The tenancy ended on December 31, 2022. The Tenant provided vague and unclear statements about what she served to the Landlord, and when, but eventually she stated that she sent the Landlord her forwarding address via email around March 8, 2023. The Tenant said she had an agreement with the Landlord to send documents via email, but she did not provide proof of this agreement. The Landlord denies agreeing to service via email. The Landlord denies getting the Tenant's forwarding address in writing.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find the Tenants have not provided their forwarding address in writing to the Landlord. I am not satisfied that send the forwarding address to the Landlord's email is sufficient, in the absence of a written agreement that service via email is acceptable. Service via email is acceptable under the Act only when it is agreed to by the parties. It is recommended parties agree to this, in advance, and in writing. There is no evidence this was agreed to. Since the Tenant's forwarding address was not properly provided to the Landlord, in writing, I dismiss the Tenant's application on this matter, with leave to reapply. The Tenant should utilize a method of service under section 88 of the Act, such as registered mail, or in person.

I find it important to note the following portion of the Act:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this 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.

The Tenant remains at liberty to provide their forwarding address in writing to the Landlord. However, since the tenancy ended on December 31, 2022, the Tenant should keep in mind the time limits for providing the forwarding address, as specified above.

Since the Tenant was not successful with their application, I decline to award them the cost of the filing fee they incurred to file this application.

Conclusion

The Tenant's application has been 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: August 25, 2023

Residential Tenancy Branch