



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of her security deposit, compensation for the Landlord's failure to return the security deposit within the time limits required under the Act and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with a copy of her Application and Notice of Hearing by registered mail on November 16, 2009. According to the Canada Post online tracking system, a notification card was left for the Landlord on November 19, 2009, however he did not pick up the hearing package. I find that the Landlord was served as required by s. 89 of the Act and the hearing proceeded in his absence.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This tenancy started in March 2009 and ended on November 1, 2009 when the Tenant moved out. Rent was \$1,000.00 per month. The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The Tenant said that on October 21, 2009 she left a copy of her forwarding address in writing with the spouse of the Landlord's realtor at her residence and also faxed a copy to the realtor's office in Vernon and to her company's satellite office in Courtenay (where the Landlord resides). The Tenant claimed that the Landlord mailed her a cheque for \$500.00 which she received on November 17 or 18, 2009. The Tenant said the envelope containing the cheque was post marked November 16, 2009.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against the deposit. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security



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deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the Tenant.

Section 88 of the Act sets out the various ways in which a document may be served on a party. I find that the Tenant did not serve the Landlord with a copy of her forwarding address in writing as required by s. 88 of the Act because there is no evidence that the fax numbers to which the Tenant's letter was sent were addresses for service given by the Landlord as required by s. 88(h) of the Act. Furthermore, I find that service of the Tenant's letter on the spouse of the Landlord's realtor does not satisfy the requirement of s. 88(b) of the Act which says it must be served on the agent herself.

As the Tenant has received her original security deposit, I find that there are no grounds for ordering that the Landlord pay compensation of \$500.00 pursuant to s. 38(6) of the Act and as a result, the Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed. 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: December 29, 2009.

Dispute Resolution Officer