



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover her filing fee for her application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her 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 evidence and to make submissions. As the landlord confirmed that she received the tenant's application for dispute resolution by registered mail, I accept that the tenant served her application to the landlord in accordance with the *Act*.

Service of the Landlord's Application for Dispute Resolution

At the commencement of the hearing, the landlord said that she sent a copy of her dispute resolution hearing package by registered mail to the tenant on December 13, 2010. She provided a copy of a Canada Post ExpressPost tracking number to confirm this mailing. The tenant said that she never received this package, nor had she received any notice that it had been sent to her. As the landlord had entered into written evidence a copy of her mailing documentation, the landlord corrected her earlier oral testimony by testifying that she sent her dispute resolution hearing package to the tenant's former address by ExpressPost and not registered mail.

Section 89(1) of the *Act* establishes the methods by which an application for dispute resolution can be served. While subsection 89(1)(c) of the *Act* allows service by registered mail, service by ExpressPost is not one of the allowable ways to serve an application for dispute resolution. Since the landlord has not served her dispute resolution hearing package to the tenant in a way permitted under the *Act* and the tenant has not received the landlord's application, I dismiss the landlord's application for dispute resolution with liberty to reapply.

Issues(s) to be Decided

For the purposes of obtaining a return of her security deposit, has the tenant provided her forwarding address to the landlord in writing as required by the *Act*?

Background and Evidence

This fixed term tenancy commenced on August 1, 2010 and was scheduled to end on August 31, 2011. Monthly rent was set at \$1,450.00, payable in advance on the first of each month. The tenant was responsible for one-half of the utilities. The landlord continues to hold the tenant's \$725.00 which the landlord said was paid early in August 2010. The tenant testified that she paid this security deposit in July 2010.

The parties agree that the landlord issued the tenant a 1 Month Notice to End Tenancy for Cause on October 2, 2010. Neither party provided a copy of that Notice. The landlord identified October 31, 2010 as the effective date of the cancellation of the tenancy in her Notice to End Tenancy.

The tenant testified that she vacated the rental unit as requested before November 1, 2010. The landlord testified that she did not provide free and vacant possession of the rental unit and hand her the keys until November 3, 2010.

The tenant submitted written evidence that she sent the landlord an electronic mail (email) on November 15, 2010, requesting that she return her security deposit to her new address in XYZ. She testified that the landlord sent her an email on November 28, 2010 stating that she could come and pick up the security deposit. The tenant testified that the landlord deducted amounts of \$89.00 for carpet cleaning and \$100.00 for cleaning from her security deposit. Since the landlord did not return all of her security deposit within 15 days of being notified of her forwarding address or the end of the tenancy whichever comes later, the tenant applied for dispute resolution on November 30, 2010. She applied for a monetary award of \$1450.00, an amount which doubled her security deposit. She also applied for recovery of her \$50.00 filing fee.

Analysis - Tenant's Application for Return of Double Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1) of the *Act*, the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the

tenant does not supply her forwarding address in writing within a year, the landlord may retain the deposit.

With respect to the return of the security deposit, the triggering event is the provision by the tenant of the forwarding address. The landlord denies having received the tenant's new address by way of the tenant's November 15, 2010 email. The tenant's email of November 15, 2010 does not meet the requirement to provide her forwarding address in writing. Although the tenant sent the landlord a copy of a document containing her former address in her evidence package for this hearing on April 7, 2011, this is not the tenant's current address. At the hearing, the tenant provided oral testimony regarding her new address in Ontario. As of this date, the tenant has still not provided her current forwarding address in writing to the landlord in a way that would initiate the landlord's 15-day period to either return the tenant's security deposit or apply for dispute resolution. I find that the tenant has not yet provided the landlord with her forwarding address in writing. Therefore, the landlord's obligations to return the security deposit or file for dispute resolution have not yet been triggered.

As the tenant has not sent her forwarding address in writing to the landlord, I dismiss the tenant's application to obtain a return of double her security deposit as the tenant's application is premature. The tenant remains at liberty to apply for dispute resolution if within 15 days of receiving the tenant's written request to return the security deposit to her forwarding address the landlord fails to either make a new application for dispute resolution or to return the tenant's security deposit in its entirety.

Conclusion

I dismiss the landlord's application in its entirety with leave to reapply.

I dismiss the tenant's application to obtain a return of her security deposit because she has not sent her forwarding address to the landlord in writing.

Both parties bear the costs of their filing fees for their applications.

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*.