



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

Preliminary Issue – Scope of Application

I asked the tenant to clarify to what her "other" remedy relates. The tenant was unable to identify what remedy she was seeking and asked to withdraw this portion of her claim.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As there is no prejudice to the landlord by allowing the tenant to withdraw this portion of her claim, I allowed the amendment.

Pursuant to subsection 39(6) of the Act, where a landlord fails to meet the requirements of section 38, the tenant is entitled to return of double his or her security deposit.

Preliminary Issue – Service of Dispute Resolution Package

The tenant filed her application on 20 August 2014. The notice of hearing for this application is dated 21 August 2014. The tenant testified that she did not receive a copy of this notice by email until September. The tenant testified that she had to wait to serve the dispute resolution package as she needed to gather money for the registered mailing.

The tenant testified that she served the landlord with the dispute resolution package on 19 October 2014 by registered mail. The tenant provided me with a Canada Post tracking number. The tenant provided me with a printout that shows that the package was delivered on 28 October 2014.

Section 59 of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within three days of making it, or within a different period specified by the director. In addition, Rule 3.1 of the *Residential Tenancy Rules of Procedure* provides that the notice of dispute resolution hearing must be served on the respondent together with the application for dispute resolution. However, the Act does not specify any particular consequences or penalty for failing to serve such documents within the prescribed time limit.

Although the late service of the application for dispute resolution does not automatically mean that a hearing will not proceed, there may be some circumstances where administrative fairness requires that a respondent be granted more time to prepare for a hearing.

I find that the landlord received the tenant's dispute resolution package on 28 October 2014 and had nearly five months to review the contents and prepare for this hearing. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Service of Landlord's Evidence

The landlord testified that he served the evidence to the tenant by registered mail. The landlord provided me with a Canada Post tracking number that set out the same. The tenant admitted that she received all of the landlord's evidence. On the basis of this evidence, I am satisfied that the tenant was served with the evidence pursuant to sections 88 and 90 of the Act.

The landlord provided receipts in support of his reasons for keeping the tenant's security deposit. I informed the landlord at the hearing that because there is no application from him before me, the landlord's evidence in respect of damages or losses that he sustained is not relevant for the purpose of the tenant's application.

Preliminary Issue –Tenant's Evidence

The tenant testified that she served her evidence to the landlord by regular mail. The landlord testified that he did not receive the tenant's evidence. I informed the tenant at the hearing that as the landlord had not received the tenant's evidence, I would not be considering her documentary evidence at this hearing.

The tenant's documentary evidence is excluded.

I asked the tenant if she would like to adjourn so that she could reserve the landlord with the evidence in support of the tenant's application. The tenant stated that she wanted to proceed with this hearing.

The landlord asked at the hearing that I order the tenant to deliver copies of text messages that she had provided to me as evidence to the landlord. The landlord submitted that he was unable to print his text messages from his phone. I reminded the landlord that I was not considering the tenant's documentary evidence and declined to make such an order for production.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the Act? 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, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The landlord and tenant entered into a written tenancy agreement on 4 August 2011. The tenancy began 6 August 2011 and ended 31 July 2014. Monthly rent of \$900.00 was due on the first. The landlord collected a security deposit of \$450.00.

The tenant testified that she sent the landlord a text message on 4 August 2014 that provided the landlord with the tenant's forwarding address.

The landlord and tenant disagree about the condition in which the rental unit was left by the tenant.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

Section 88 of the Act sets out how documents may be delivered. Text message is not an acceptable method of service pursuant to section 88 of the Act. As the tenant provided her forwarding address by text message to the landlord, the tenant has not provided the landlords with her forwarding address in writing. As such, I dismiss the tenant's application as her claim is premature.

The tenant may file another claim when she provides the landlord with her forwarding address in accordance with both section 38 and section 88. This leave to reapply is not an extension of any time limit under the Act.

Conclusion

The tenant's claim is dismissed with leave to reapply should her entitlement to the security deposit crystalize.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 18, 2015

Residential Tenancy Branch

