



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Akal Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for return of double the security deposit. The tenant appeared; the landlord did not.

Section 59(3) of the *Residential Tenancy Act* states 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 as specified by an arbitrator.

This application for dispute resolution was filed on March 12, 2015. The tenant suffers from dementia and is assisted by his sister, who lives in another province. When the Application for Dispute Resolution and Notice of Hearing were ready to be picked up by the tenant a voice mail message was left for him advising him of the same. He did not understand the message and did not pick up or serve the documents immediately. His sister became aware of the message on March 24. On March 25 the package was picked up and sent by registered mail to the landlord. A copy of the registered mail receipt was filed in evidence.

Although served after the three day period the Application for Dispute Resolution and Notice of Hearing were served well in advance of the hearing. The landlord had ample time to serve and file any evidence within the time frames specified by the *Rules of Procedure*.

As the landlord has not been prejudiced by the fact the Application for Dispute Resolution and Notice of Hearing were served outside of the three day time period set out in section 59(3) I find, pursuant to section 59(3) and 71(2)(b) that they have been sufficient served by registered mail, which pursuant to section 90 is deemed delivered five days after mailing.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

This month-to-month tenancy commenced September 1, 2014. A move-in inspection was not conducted nor was a move-in condition inspection report completed. There was no written tenancy agreement. The monthly rent of \$750.00 was due on the first day of the month. The tenant paid a security deposit of \$375.0.

Before the end of September the tenant gave a written notice to end tenancy effective October 31, 2014. The tenant paid the rent to the end of October.

The tenant and his sisters spoke to the property manager on several occasions, both in person and on the telephone, providing the tenant's new address and asking about the return of the security deposit. In at least one of these conversations the manager read back the tenant's address to his sister. In several of these conversations the manager promised payment of the security deposit to the tenant.

When payment was never received, the tenant filed this application for dispute resolution. The Application for Dispute Resolution was the first document served on the landlord that contained the tenant's forwarding address in writing.

Analysis

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit.

Although the landlord was advised orally on many occasions of the tenant's forwarding address in writing and made many promises to pay the security deposit to the tenant the first time the landlord received the tenant's forwarding address in writing was when it was served with this Application for Dispute Resolution.

Because section 38(6) is a penalty the tenant must comply precisely with the legislation before they can claim for payment of the penalty. In other words, the tenant must provide their forwarding address to the landlord in writing before they can make an application for payment of double the security deposit.

The tenant's application is dismissed with leave to re-apply.

The tenant must send this decision to the landlord by registered mail. Pursuant to section 90 the document is deemed delivered five days after it is mailed, although the tenant should keep the post office receipt with the tracking number and be able to provide that information in a future hearing, if required.

The landlord is advised that it has fifteen days from the deemed date of receipt of this decision to deal with the deposit pursuant to section 38. If it does not, the tenant may again apply for return of double the security deposit.

Conclusion

The tenant's application is dismissed with leave to re-apply.

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: June 11, 2015

Residential Tenancy Branch

