



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD Monetary Order for the Return of the Security Deposit

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

Both the landlord and the tenant initially appeared. During the hearing it became evident that at some point during the proceedings the tenant was disconnected from the conference call hearing.

Issue(s) to be Decided

The tenant was seeking a monetary order for the return of the security deposit that the retained by the landlord.

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act. This determination is dependant upon the following:
 - Did the tenant pay a security deposit?
 - Did the tenant furnish a forwarding address in writing to the landlord?
 - At the end of the tenancy, did the tenant provide written consent to the landlord to retain the security deposit to satisfy a debt or claim?

- Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy and receipt of the forwarding address?

The burden of proof is on the applicant to show that the deposit was paid.

Background and Evidence

The tenant's application indicated that when the tenant moved out of the unit, she asked the landlord to return the security deposit and the landlord refused. The landlord had submitted into evidence a copy of the written fixed-term tenancy agreement showing that the tenancy that began on August 1, 2008 and was to expire July 31, 2009, that rent was \$2,700 per month and a deposit of \$1,300.00 was paid. Also submitted into evidence was a statement by the landlord containing a written chronology of events indicating that the tenant had vacated the unit at the end of February 2009 and refused to pay any rent after that time. The landlord stated that the tenancy agreement contained a clause stating that the tenant agreed to forfeit the deposit if the tenant broke the lease. The landlord also testified that at no time did the tenant furnish a written forwarding address to the landlord until the Notice of Hearing arrived. The landlord testified that the landlord incurred a loss of rent and other damages equaling or exceeding the deposit.

Analysis

In regards to the return of the security deposit and pet damage deposit, I find that section 38 of the Act is clear on this issue. A landlord can either return the deposit or make an application for dispute resolution seeking an order to keep the deposit to satisfy a liability or obligation of the tenant. However, in order to make a claim against the deposit, the application for dispute resolution must be filed within 15 days after the written forwarding address was received.

The Act also states that a landlord can retain a deposit if the tenant agrees to this in writing and signs it over at the end of the tenancy. If permission is not in written form, then the landlord's right to keep the deposit does not exist.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give the landlord written permission to keep the deposit. That being said, I find that the tenant failed to provide a written forwarding address to the landlord.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that because the tenant did not provide the forwarding address in writing, and the landlord only received the tenant's new address in the application notice, the fifteen days will commence to run as of the date of this decision, that being June 4, 2009.

I do not accept the landlord's argument that the deposit can be automatically retained by the landlord under the terms of the tenancy agreement signed by the tenant regardless of whether it contained a term permitting the landlord to keep the deposit if the tenant violates the agreement. I find that this term would violate section 20 (e) of the Act, which states that a landlord must not "*require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement*"

In regards to the landlord's own claim for damages and loss of rent, I am not able to hear nor consider the landlord's claim during these proceedings as this hearing was convened to deal with the *tenant's* application under section 38 of the Act. The landlord is at liberty to make a separate application if the landlord wants to initiate a claim for compensation for damages and loss pursuant to section 67 of the Act.

In the matter before me, however, I find that the tenant's application for the return of the deposit is premature, being that the tenant did not provide a written forwarding address to the landlord and the fifteen-day deadline is still ahead.

Conclusion

Based on the testimony and evidence presented during these proceedings, the tenant's application is hereby dismissed in its entirety with leave to reapply.

June 2009

Date of Decision

Dispute Resolution Officer