



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPL, OPC, MNSD

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant to set aside a Two-Month Notice for Cause and a One-Month Notice to End Tenancy for Landlord's Use. The tenant was also seeking an order for the return of the security deposit and the pet damage deposit retained by the landlord.

Both the landlord and the tenant appeared and each gave testimony.

Preliminary Matter

The parties advised that the tenancy had ended and the tenant had moved out on September 2, 2009 pursuant to the two-month Notice which was effective September 30, 2009. Therefore the tenant's application to cancel the Notices is no longer necessary and will be dismissed.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit that the tenant considers as having been wrongfully retained by the landlord. The issues to be determined based on 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?
- Did the tenant provide written consent to the landlord permitting the landlord to retain the security deposit or any portion of the deposit at the end of the tenancy?
- Did the landlord make application to retain the security deposit for damages or loss within 15 days of the end of the tenancy or the receipt of the forwarding address?

The burden of proof is on the applicant to prove the deposit was paid and not returned and that the landlord did not have authorization under the Act to keep it.

Background and Evidence

Both parties acknowledged that a deposit of \$800.00 was paid when the tenancy began in May 2009 but was not refunded after the end of the tenancy. Both parties acknowledged that the tenant had not yet supplied his current address to the landlord in writing.

Analysis

During these proceedings, the tenant has now given the landlord his current address which is X Street, (Town), B.C. I find that the landlord must therefore administer the security deposit in accordance with section 38 of the Act.

The Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord's right to keep the deposit does not exist. In this instance, based on the evidence and the testimony, I find that the tenant did not give the landlord written permission to keep the deposit.

Without the tenant's written permission to keep the deposit, a landlord can only retain the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord obtains an order retain the amount. To make a claim

against the deposit , the application for dispute resolution must be filed within 15 days after the forwarding address was received.

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.

In regards to any claims by the landlord relating to damages and loss, I am not able to hear nor consider evidence on these matters, as this hearing was convened to deal with the *tenant's* application under section 38 of the Act. That being said, I must point out that the landlord is at liberty to make a separate application if the landlord wants to initiate a formal 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 return of the security deposit is premature as it was made prior to furnishing the landlord with a written forwarding address. Therefore, this portion of the tenant's application is dismissed with leave to reapply should the landlord fail to return the tenant's security deposit within 15 days of this decision.

Conclusion

Based on the testimony and evidence presented during these proceedings, I order that the tenant's application is hereby dismissed with leave to reapply.

September 2009

Date of Decision

Dispute Resolution Officer