

Decision

Dispute Codes: MNSD, O, FF

Introduction

A hearing was originally convened on November 19, 2009, in response to an application from the tenant. In his application the tenant seeks the return of double his security deposit, recovery of a half month's rent, as well as miscellaneous costs associated with preparing for the hearing, and recovery of the filing fee.

Responding to a request from the landlord, the dispute resolution officer granted an adjournment. The reason cited was that the tenant had submitted evidence one day late, and the landlord sought to have an opportunity to properly consider the evidence and prepare a response.

The Branch re-scheduled the hearing to commence by way of conference call at 9:30 a.m. on December 30, 2009, and a notice of dispute resolution hearing was mailed to the respective parties by the Branch.

As at 9:30 a.m. on December 30, 2009, the tenant had called into the conference call. However, as at 9:45 a.m. the landlord had still not called in. Accordingly, this decision has been reached on the basis of documentary evidence submitted by both parties, in addition to the undisputed testimony of the tenant.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act

Background and Evidence

On June 30, 2009, after viewing the unit the tenant paid a \$600.00 security deposit to the landlords' agent. Monthly rent was \$1,195.00, and it was verbally agreed that the tenant would take possession of the unit effective July 15, 2009. In the meantime, it

was further agreed that painting, installation of new carpet and miscellaneous cleaning in the unit would be completed by July 15, 2009.

On July 14, 2009 the tenant paid the landlords' agent \$600.00 for rent from July 15 to 31, 2009, and in return he was given a key to the unit. However, when the tenant arrived at the unit on July 15, 2009 with the intention of moving his possessions into the unit, he found that the work, as above, had not been completed to his satisfaction.

Finally, on July 19, 2009 as the tenant remained dissatisfied with the condition of the unit, he verbally informed the landlords' agent that he was not going to proceed with the tenancy. Subsequently, the landlords' agent declined the tenant's request for the full return of his security deposit and a half month's rent.

The tenant states that the landlords knew of his forwarding address by way of the "application for rent of suite & contract" which was given to the landlords' agent and dated June 24, 2009. As well, the tenant states that the landlords' agent made manual notations of his address particulars when he verbally informed her during the time when the parties entered into a verbal tenancy agreement.

In the written submission from the landlords' agent, she states in part, as follows:

[The tenants] wanted the suite for August 1st, 2009 but decided to take it as I had someone else interested for July 16 / 2009.

The tenant testified that he does not know whether the landlords found new renters after he informed the landlords' agent of his decision not to proceed with the tenancy.

Analysis

Section 12 of the Act provides that **Tenancy agreements include the standard terms**, and reads in part, as follows:

12 The standard terms are terms of every tenancy agreement

(b) whether or not the tenancy agreement is in writing.

Section 16 of the Act speaks to the **Start of rights and obligations under tenancy agreement**, and provides as follows:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 20 of the Act addresses **Landlord prohibitions respecting deposits**, and provides in part, as follows:

20 A landlord must not do any of the following:

- (a) Require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

Arising from the documentary evidence and the undisputed testimony of the tenant, I find that the landlords' agent collected a security deposit from the tenant on June 30, 2009. I find that by way of this transaction the parties entered into a tenancy agreement for a month-to-month tenancy to be effective commencing July 15, 2009.

Section 45 of the Act addresses **Tenant's notice**, and provides in part, as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Further, section 45(4) of the Act provides:

45(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

As the tenant verbally informed the landlord on July 19, 2009 of his decision not to proceed with the tenancy, I find that the tenant's notice does not comply with the above statutory provisions. Accordingly, I dismiss the tenant's application to recover his payment of a half month's rent in the amount of \$600.00 for the period from July 15 to 31, 2009.

There is no conclusive evidence before me in relation to whether new renters were found for the unit and, if so, when.

As to the disposition of the security deposit, section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part, as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

- (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that as the tenant has not presently informed the landlord in writing of his forwarding address according to the above statutory requirements, he has the option of so doing. Related to this, section 38(6) of the Act states:

38(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Conclusion

Pursuant to all of the above, I hereby dismiss the tenant's application to recover a half month's rent in the amount of \$600.00.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's application for miscellaneous costs incurred in preparation for this hearing is dismissed.

Further, as the tenant has not succeeded in this application I hereby dismiss his application for recovery of the \$50.00 filing fee.

Finally, the tenant has the option of informing the landlord in writing of his forwarding address and requesting the return of his \$600.00 security deposit. In the meantime, this aspect of the tenant's application is dismissed with leave to reapply.

DATE: December 30, 2009

Dispute Resolution Officer