



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC and MT

Background

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution. On December 03, 2009 the Tenant applied to set aside a Notice to End Tenancy for Cause; for more time to apply to set aside the Notice to End Tenancy; and for the return of his security deposit. On December 04, 2009 the Tenant amended his Application for Dispute Resolution by withdrawing his application for the return of his security deposit.

The Tenant stated that copies of the Application for Dispute Resolution that was amended on December 04, 2009 and the Notice of Hearing were sent to the Landlord on December 10, 2009 via registered mail at the address noted on the Application. A Canada Post receipt was submitted to corroborate that statement. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

The Tenant stated that he amended his Application for Dispute Resolution again and that he faxed eight pages of documents, including an amended Application for Dispute Resolution, to the Residential Tenancy Branch on December 29, 2009. The Tenant stated that he had amended the Application for Dispute Resolution to include an application for the return of his security deposit. The only evidence before me at the hearing that had been faxed to the Residential Tenancy Branch on December 29, 2010, was a cover letter detailing that the Tenant was faxing eight pages plus the first page of a computer generated Application for Dispute Resolution. The first page does not indicate the date of the application nor does it outline the dispute codes or the nature of the dispute.

The Tenant stated that copies of the Application for Dispute Resolution and documents that were faxed to the Residential Tenancy Branch on December 29, 2010 were sent to the Landlord on December 29, 2009 via registered mail at the address noted on the Application. A Canada Post receipt was not submitted to corroborate that statement, however the Tenant did provide a tracking number that corroborates his statement. On the basis of the Tenant's statement that he had amended his Application for Dispute Resolution to include an application for the return of his security deposit, I heard the Tenant's evidence that relates to the security deposit.

At the conclusion of the hearing I searched the Residential Tenancy Branch records and was unable to find any record of the Tenant amending his Application for Dispute Resolution after December 04, 2010. In the absence of an Application for Dispute Resolution that was amended after December 04, 2010, I find that I am only able to consider the claims that were made in the December 04, 2010 Application for Dispute Resolution, which include an application to set aside a Notice to End Tenancy for Cause and for more time to apply to set aside the Notice to End Tenancy.

Conclusion

At the hearing the Tenant stated that he vacated the rental unit on December 16, 2009. As the rental unit has been vacated, I find that there is no need to consider the Tenant's application to set aside a Notice to End Tenancy for Cause and for more time to apply to set aside the Notice to End Tenancy

The Tenant retains the right to file another Application for Dispute Resolution in which he applies for the return of his security deposit. For the benefit of both parties, section 38 of the *Act* reads:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.

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: January 15, 2010.

Dispute Resolution Officer