

Decision

Dispute Codes: MNSD, RPP

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order to obtain a return of a security deposit pursuant to section 38.
2. To recover the tenant's personal property pursuant to section 72.

Both parties appeared and were given an opportunity to be heard, to present evidence and to make submissions.

The tenant stated that he was now in possession of his personal property. The only issue that he was pursuing through dispute resolution was his request to have his security deposit returned to him by the landlord.

The tenant testified that he personally served notice of his application for dispute resolution to the landlord, attended by another individual who did not participate in this hearing. Neither the tenant nor the landlord knew when this service occurred, but both agreed that it was served to the landlord. As such, I accept that the tenant did serve the landlord with this application for dispute resolution.

The landlord objected to being classified as a landlord for the purposes of the *Residential Tenancy Act*, maintaining that the motel that he operates is subject to the "*Innkeepers Act*." Although there is no "*Innkeepers Act*," there is a *Hotel Keepers Act*.

The landlord testified that his motel has daily, weekly and monthly rates. He said that any monthly rentals are done on the basis of his kindness, and that daily rates are the standard at his motel. He testified that he did receive a security deposit for this tenancy and that the rental premises were rented to the tenant on a month to month basis.

Although I have given the landlord's concerns consideration, I find that he is not excluded from being considered as a landlord under the provisions of section 4 of the *Residential Tenancy Act*. I am satisfied that the relationship between the tenant and the landlord created a tenancy that falls under the *Residential Tenancy Act*. I find that I have jurisdiction to consider this application.

During the hearing, I provided frequent reminders to the parties to refrain from using profane language, name-calling, and what could only be interpreted as threats of violence against one another. Their ongoing behaviour and their unwillingness to let one another speak without derogatory remarks made it difficult to come to a proper understanding of the tenant's application and the landlord's response. Many of the facts were disputed and unclear. Neither party presented any written evidence to support their testimony.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the tenant is entitled to receive recovery of all or a portion of the security deposit for this tenancy.

Background and Evidence

The tenant testified that he commenced paying rent to the landlord on April 15, 2010. He maintained that he was paying \$650.00 in rent each month. He testified that he was seeking a rebate of the security deposit, which he believed was half of the monthly rental (i.e., \$325.00). He was not certain who paid the security deposit or when. He believes that the Employment and Income Assistance Office may have paid his security deposit on his behalf. He said that he left the rental premises 18 days before the end of

May 2010. In his application, he stated that he was also seeking a rebate for that portion of his May rent after he left the premises.

The landlord testified that the tenant was paying \$625.00 in rent. He said that the security deposit was for \$125.00. He testified that the tenant caused major damage to the rental premises. He reviewed a long list of damage to the rental unit, which included broken mirrors, holes in walls, tennis balls flushed down toilets, pellet and BB gun damage within the rental unit. He maintained that he had photographs of the damage caused to the rental premises, noting that his cleaning staff also witnessed this damage. He provided no written or photographic evidence to support his assertion that the tenant caused major damage to his premises.

Analysis

The parties' conduct during the hearing made it very difficult to understand their positions. The total lack of documentary evidence in this matter causes problems in considering the tenant's application. Since the tenant commenced this application, he bears the burden of establishing details regarding the security deposit he is claiming. He has not met that burden of proof.

By the landlord's admission, he did receive a \$125.00 security deposit. However, the tenant appears to have applied for a return of his security deposit without giving the landlord his forwarding address in writing and shortly after he left the rental premises. The landlord testified that the tenant caused major damage to the premises, which may also affect any security deposit claimed by the tenant. The tenant did not dispute the landlord's remarks regarding the damage caused to the rental premises.

The triggering event for the return of a security deposit is the tenant's provision of a forwarding address in writing to the landlord. The landlord then has 15 days to do one of the following:

- return deposit monies to the tenant;

- ask the tenant in writing to let the landlord keep some or all of the deposit money; or
- apply for dispute resolution asking for an order to keep all or some of the deposit money. (The landlord can continue to hold a deposit until the dispute resolution process is finished.)

Since the tenant has not provided the landlord with a forwarding address where he can return his security deposit, the tenant's application is premature. I dismiss the tenant's application with leave to reapply.

I dismiss the tenant's request for a rebate in rent paid for May 2010, as he did not provide sufficient evidence to support his assertion that he was entitled to a rebate.

Conclusion

I dismiss the tenant's application for a return of his security deposit with leave to reapply.

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*.