

DECISION

Dispute Codes MNSD MNDC FF
 MNSD

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order to keep the security deposit in partial satisfaction of his claim, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for the return of his security deposit.

The Landlord appeared, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

The Tenant did not appear despite having filed his own application for dispute resolution which was scheduled for the same hearing date and time.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Is the Tenant entitled to a Monetary Order under section 38 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord advised that he served the hearing documents to the Tenant via registered mail. The Landlord stated that he could not provide the date or tracking number of the registered mail package as he was at work and did not have his documents with him. The Landlord stated that the registered mail envelope was returned to him by the post office with the address crossed out and a note written on the envelope stating that nobody was at the address to accept delivery. The Landlord stated the hearing documents were addressed to the address that was provided to him by the Tenant when the Tenant vacated the rental unit.

The Landlord stated that he could not provide definitive testimony relating to the tenancy as this situation happened a long time ago. The Landlord argued that he thought he entered into a written tenancy agreement for what he remembers to be a month to month tenancy which began sometime around May 1, 2009. The rent was payable on the first of each month in the amount of \$1,150.00 and the Tenant paid \$575.00 for security deposit and \$575.00 for the pet deposit sometime around the beginning of the tenancy.

The Landlord confirmed that he spoke with an Information Officer at the *Residential Tenancy Branch* and discussed service of the hearing documents and submission of evidence, as noted on the file. The Landlord could not confirm or deny that he submitted evidence in support of his application as he could not remember that far back.

The Landlord argued that he is only seeking to keep the security and pet deposit and wants to prevent the Tenant from applying for the return of these amounts. The Landlord stated that the Tenant provided written, signed, permission for the Landlord to keep the security and pet deposits as payment for the December 2009 rent. The Landlord stated that he has kept the written document, signed by the Tenant, and will continue to keep that document as long as needed to prove he had permission.

The Landlord stated that he was not aware that the Tenant filed an application for dispute resolution against the Landlord and he did not receive any documents or evidence from the Tenant what so ever.

Analysis

Landlord's Application

The Landlord provided evidence that the hearing package, which was allegedly sent to the Tenant via registered mail, was returned to the Landlord. The Landlord could not testify for certain that he knew that the address where the Notice of Dispute Resolution hearing package was mailed was in fact where the Tenant resided. The Landlord stated that it was an address the Landlord was given by the Tenant. The Landlord could not provide additional testimony as he did not have the information with him during the hearing nor did the Landlord provide evidence in support of his claim.

I find that service of the Notice of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act* which states that service of Notice of Dispute Resolution, if sent via registered mail, must be sent to the address at which the

person resides. To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the Landlord's claim, with leave to reapply.

As the Landlord has not been successful with his application, I decline to award the Landlord recovery of the filing fee.

I informed the Landlord that section 38 (4) of the *Act* provides that a landlord may retain an amount from the security and or pet deposit if at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. I also confirmed that claims can be made relating to a tenancy agreement up to two years from the date the tenancy ended.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of his application and the application is dismissed, without leave to reapply.

Conclusion

Landlord's Application

I HEREBY DISMISS the Landlord's claim, with leave to reapply.

Tenant's Application

The Tenant's application is HEREBY DISMISSED, without 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*.

Dated: June 07, 2010.

Dispute Resolution Officer