



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, his agent and the landlord. While the hearing began at 9:00 a.m. the landlord called in approximately 5 minutes after the start of the hearing. All matters discussed prior to the landlord's attendance were relayed to her when she joined the call.

During the call, the landlord identified that she needed to leave the call and return to work, she did so at approximately 9:45 a.m. and the call continued until approximately 9:55 a.m.

On the matter of service, the tenant provided testimony and evidence confirming his attempt to serve the landlord with notice of hearing documents at some time over the summer months. The evidence provided includes a copy of the envelope sent to the landlord but the postage date stamp is unreadable; a copy of Canada Post's redirection label of the document to be returned to sender as unclaimed, dated August 18, 2010.

The landlord contends that she was not served with the Notice of Hearing documents until September 2010 which is not in accordance with the requirements to be served within 3 days of making an Application for Dispute Resolution. The tenant testified that he did continue to try and serve the landlord and was successful when he served her in person, in her driveway.

Based on this evidence, I find the landlord was sufficiently served with notice of the hearing and in accordance with the *Residential Tenancy Act (Act)*.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began as a month to month tenancy on April 29, 2010 with a monthly rent of \$720.00 due on the 1st of the month with a security deposit of \$360.00 paid and that the tenancy ended between June 25, 2010 and June 30, 2010. The tenant had paid rent for the full month of June 2010.

The landlord testified that a move in condition inspection report was included in the tenancy agreement and was signed by the tenant and the landlord on April 26, 2010. While the landlord provided copies of three pages from the tenancy agreement, she did not provide into evidence a complete copy of the agreement.

The landlord contends that a move out condition inspection had originally been scheduled for June 25, 2010 between 6:00 and 7:00 p.m. but that the tenant did not attend and another appointment was set for June 26, 2010 at which the tenant also did not attend.

The landlord then, on June 28, 2010, completed a Notice of Final Opportunity to Schedule a Condition Inspection with an appointment time for June 29, 2010 at 7:00 p.m. and as she did not yet have the tenant's forwarding address she took it to the tenant's doctor's office to have the office give it to the tenant.

The tenant testified that he provided his forwarding address and the keys by leaving a letter in the landlord's mailbox on June 30, 2010. The landlord confirmed she received this letter but not until she returned from vacation near the end of July 2010.

Analysis

Section 23 of the *Act* requires the landlord and tenant to inspect a rental unit on the day the tenant takes possession or on a mutually agreed upon day. The onus is on the landlord to complete a Condition Inspection Report and provide a copy to the tenant.

Based on the testimony provided by both parties and the lack of any supporting documents, I find that the landlord has failed to provide sufficient evidence to substantiate that a move in Condition Inspection Report was completed in accordance with the *Act*.

Section 35 stipulates that a landlord and tenant must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit or on a mutually agreed day. The section also requires the landlord offer the tenant at least 2 opportunities in accordance with Residential Tenancy Regulation 17(2)(b) that requires the landlord provide the tenant with written notice in the approved form.

While the landlord did complete the approved form to provide written notice to the tenant, she served that notice by leaving it at the tenant's doctor's office, as she knew the tenant had a medical condition that required close monitoring by his doctor. Section

88 of the *Act* prescribes how documents that are required to be served on a person are served on that person. The acceptable methods to serve a tenant with a notice to attend a move out condition inspection include:

1. Leaving a copy with the person;
2. By sending a copy by ordinary or registered mail to the address at which the person resides;
3. By sending a copy by ordinary or registered mail to a forwarding address provided by the tenant;
4. By leaving a copy at the person's residence with an adult who apparently resides with the person;
5. By leaving a copy in a mail box or mail slot for the address at which the person resides;
6. By attaching a copy to a door at the address at which the person resides; or
7. By transmitting a copy to a fax number provided as an address for service by the person to be served.

As this list does not include providing a copy with the party's doctor or at the doctor's office, I find the landlord failed to comply with the requirements of service under the *Act* and therefore has failed to comply with the requirements of notification of the final opportunity to meet for a condition inspection.

As a result of this, I am not persuaded by the landlord's argument that the tenant extinguished his right to return of the security deposit by failing to attend a move out inspection.

I accept the tenant's evidence and testimony that he had agreed to allow the landlord to retain \$65.00 for carpet cleaning and \$40.00 for additional hydro due to using a space heater, despite this agreement not being in writing. I also accept the tenant's testimony that he provided his forwarding address and keys to the landlord by leaving them in her mailbox on June 30, 2010 in accordance with Section 88 of the *Act*. Section 38(3) allows the landlord to retain from that return any amounts that the tenant agrees to in writing at the end of the tenancy.

Section 90 states that a document served by leaving it in a mail box is deemed received by the party 3 days after it is left. Despite the landlord's testimony that she was out of town during most of July 2010, I find the landlord is deemed to have received the tenants forwarding address on July 3, 2010. I also accept the landlord's testimony that she has not yet returned any portion of the tenant's security deposit.

Section 38(1) of the *Act* states that a landlord must, within 15 days of the end of the tenancy and receipt of the forwarding address, return the tenants security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that if the landlord fails to comply with Section 38(1) the landlord must pay the tenant double the amount of the security deposit. As the landlord

has not provided return of any of the security deposit nor applied for dispute resolution to claim against the security deposit, I find the landlord has failed to comply with Section 38(1).

Conclusion

For the reasons noted above, I find that the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$665.00** comprised of \$720 double the amount of the security deposit and the \$50.00 fee paid by the tenant for this application less the amounts the tenant agreed upon for the landlord to retain.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 10, 2010.

Dispute Resolution Officer