



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord testified that approximately 3 to 4 weeks ago he received a telephone call from Canada Post as they were holding registered mail for pick-up. The landlord attendee at the post office and received the tenant's Notice of hearing package.

The tenant's father provided affirmed testimony that the hearing documents were sent to the landlord via registered mail on October 7, 2010. A Canada Post tracking number was provided as evidence of service.

I find that the landlord was served with Notice of this hearing, as provided by the Act; effective October 12, 2010. A failure to respond to notice of registered mail does not render service ineffective.

Issue(s) to be Decided

Does this Application fall within the jurisdiction of the Residential Tenancy Act?

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Jurisdiction

At the start of the hearing the landlord/respondent confirmed the following facts:

- He is not the owner of the rental unit;
- He acts as agent for the owner of the rental unit; and
- That the rental unit owner has asked the landlord/respondent to rent out a room and that rent collected from the tenant was collected on behalf of the rental unit owner.

Section 1 of the Act provides, in part:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement

As the individual named as the landlord in the tenant's Application meets the provisions of section 1(a) of the Act, I find that the tenancy falls within the jurisdiction of the Residential Tenancy Act.

Background and Evidence

The tenancy commenced on August 15, 2010; rent in the sum of \$750.00 was agreed to by the landlord, for the first 2 or 3 months, at which point rent would increase to \$800.00 per month. The tenant stated rent owed was \$750.00 per month.

A deposit in the sum of \$400.00 was paid at the start of the tenancy. No move-in or move-out condition inspection report was completed.

The tenant could not recall the date upon which he gave the landlord his written forwarding address; but believes it was sometime in August, 2010; he did not have a witness present at the time he gave the address to the landlord. The landlord stated he did not receive the tenant's written forwarding address.

During the hearing the tenant confirmed that the address indicated on his Application is his current forwarding address.

The landlord has not returned any portion of the deposit paid.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit

paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is no dispute related to damages before me.

I have no evidence before me that a move-in condition inspection or move-out condition inspection was completed as required by the Act. Further, I have no evidence that the tenant gave the landlord his written forwarding address. The tenant could not provide the date upon which the address was given, did not have a witness present, nor did he retain a copy of the note given to the landlord. Based on the disputed testimony and absence of evidence supporting the tenant's testimony, I find, on the balance of probabilities that the landlord has not been previously provided with the tenant's written forwarding address.

Therefore, I find that effective the date of this hearing; February 8, 2011, the landlord has 15 days, until February 23, 2011; to comply with the Act.

The tenant has confirmed his forwarding address as that contained on his Application served to the landlord.

As the tenant's Application does not have merit, I decline filing fee costs to the tenant.

As this Application was premature, I find that the tenant is at liberty, after February 23, 2011, to submit another Application requesting return of the deposit

Conclusion

This tenancy falls within the jurisdiction of the Residential Tenancy Act.

The tenant's Application requesting return of the deposit was premature, as there is no evidence before me that the landlord has been given the tenant's written forwarding address.

The landlord has until February 23, 2011, to comply with the Act in relation to return of the deposit paid.

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: February 08, 2011.

Residential Tenancy Branch