

DECISION

Dispute Codes: MNSD; FF

Introduction

This is the Tenant's application for return of the security deposit paid to the Landlord and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that he mailed the Notice of Hearing documents, by registered mail, to the Landlord at the Landlord's place of business on April 7, 2011. The Tenant provided the tracking number for the registered documents.

Based on the affirmed testimony of the Tenant, I am satisfied that the Landlord was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Despite being served with the documents, the Landlord did not sign into the teleconference and the Hearing continued in its absence.

Preliminary Matter

- Did the Tenant file his Application for Dispute Resolution within the required time limit provided under Section 60 of the Act

This tenancy ended on March 31, 2009. The Tenant filed his Application for Dispute Resolution on March 31, 2011.

Section 60(1) of the Residential Tenancy Act (the "Act") states:

Latest time application for dispute resolution can be made

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made **within 2 years** of the date that the tenancy to which the matter relates ends or is assigned.

(emphasis added)

Section 25 of the Interpretation Act states:

25 (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.

(2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

(3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

(5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.

(6) If, under this section, the calculation of time ends on a day in a month that has no date corresponding to the first day of the period of time, the time ends on the last day of that month.

(7) A specified time of day is a reference to Pacific Standard time, or 8 hours behind Greenwich mean time, unless Daylight Saving time is being used or observed on that day.

(8) A person reaches a particular age expressed in years at the start of the relevant anniversary of his or her date of birth.

(emphasis added)

Therefore, I find that the Tenant filed his Application on the last day allowed under Section 60 of the Act, and that we can proceed with his Application

Issues to be Decided

- Is the Tenant entitled to return of the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

The Tenant gave the following testimony:

This tenancy began on June 1, 2006 and ended on March 31, 2009. The Tenant paid a security deposit in the amount of \$440.00 at the beginning of the tenancy.

The Tenant phoned the Landlord in April of 2009 and provided his forwarding address and telephone number. The Landlord did not return his security deposit. The Tenant thinks he may have provided his forwarding address in writing, but does not remember for certain.

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address **in writing**, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.
(emphasis added)

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

Section 39 of the Act states:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address **in writing within one year** after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The Tenant did not provide sufficient evidence that he provided the Landlord with his forwarding address in writing within one year of the end of the tenancy. Therefore, I find that the right of the Tenant to return of the security deposit is extinguished under the provisions of Section 39 of the Act.

Conclusion

The Tenant's application is dismissed.

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: July 15, 2011.

Residential Tenancy Branch