

Decision

Dispute Codes: MNDC, MNSD

Introduction

This hearing was convened in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and return of the security deposit. The tenant attended the hearing in person and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package"), the landlords did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that as the hearing package was "unclaimed" by the landlords, it was returned to the tenant.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act, Regulation or tenancy agreement

Background and Evidence

In March 2011 the tenant found a rental advertisement appearing on craigslist. It is understood that the room available for rent is one of several rooms rented within a house. On or about April 1, 2011 the tenant attended the house and dealt with a person understood to be the agent of the registered owners of the house. It is the registered owners of the house who are named as the landlords in the tenant's application. In summary, the tenant made a cash payment to the agent in the amount of \$450.00; this was comprised of \$375.00 designated for shelter by the Ministry, and \$75.00 from the tenant's designated living expenses.

The tenant, after persevering with his request for a receipt, received a receipt from the agent showing that rent had been paid only for the period from April 1 to 15, 2011. The tenant testified that the agent accepted half the payment of \$225.00 as rent for this period, and the other half of \$225.00 as a security deposit. Faced with these circumstances, the tenant contacted the Ministry who identified some concern about the arrangement and advised the tenant not to proceed with the tenancy; instead, the Ministry instructed the tenant to request a return of the \$450.00 from the agent. However, the agent declined to return any portion of the \$450.00. Subsequently, the tenant obtained an emergency grant from the Ministry and found alternate temporary

accommodation. The tenant testified that the Ministry instructed him to proceed with an application to the Residential Tenancy Branch in order to seek recovery of the \$450.00.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the tenant entered into a month-to-month tenancy agreement with the landlords by way of his payment to the landlords' agent in the amount of \$450.00, on or about April 1, 2011. Despite this, pursuant to information / advice given to him by the Ministry, the tenant did not proceed to move into the unit.

Section 12 of the Act speaks to **Tenancy agreements include the standard terms**, and provides in part:

12 The standard terms are terms of every tenancy agreement

(b) whether or not the tenancy agreement is in writing.

Section 16 of the Act addresses **Start of rights and obligations under tenancy agreement**, and provides:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenant did not provide notice to end the tenancy pursuant to the above statutory provisions. In the result, I am unable to find that the tenant has established entitlement to the return of rent in the amount of \$225.00 for the period from April 1 to 15, 2011.

However, I also find that the landlord has not filed an application to retain the security deposit of \$225.00. In this regard, section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. In part, section 38 of the Act provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Following from the above, while the tenancy clearly ended several months ago, there is no evidence before me that the tenant provided the landlord with his forwarding address in writing and requested the return of his security deposit. The tenant has the option to do so.

Conclusion

The tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement is hereby dismissed.

The tenant's application for a monetary order as compensation for the return of his security deposit is hereby dismissed 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*.

DATE: November 17, 2011

Residential Tenancy Branch