



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an application by the tenant for double recovery of the security deposit. The tenant, an agent for the landlord and counsel for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?

Background and Evidence

The tenancy began on February 17, 2010. At the outset of the tenancy, the tenant paid a security deposit of \$500. The tenancy agreement indicates that the landlord is a property management company, CRG. The tenancy agreement contains a clause as follows: "The term "LANDLORD" is generally defined by the Residential Tenancy Act as being the owner of the property and in the case of this agreement shall be defined as the property owner." The tenancy agreement does not identify the property owner by name, either as the landlord or otherwise. The tenancy agreement was signed by the tenant and a property manager of CRG.

The tenancy ended on April 30, 2011, and the tenant provided the landlord his written forwarding address on that date. The landlord has not returned the security deposit or applied for dispute resolution.

Tenant's Evidence

The tenant was an employee of the landlord CRG. The property manager, JS, hired the tenant as an employee, and also signed the tenancy agreement as agent for the landlord. The tenant received an advance on his pay to pay for the security deposit.

Landlord's Response

The property management company, CRG, is not the landlord. CRG relies on the clause in the tenancy agreement to support their position that the property owner is the landlord. The tenant was the property manager for his own unit, and he wrote his own tenancy agreement.

CRG acknowledged that the tenant paid a security deposit, that his rent was paid to CRG, and that CRG received the tenant's written forwarding address but did not return the security deposit.

Analysis

I find that CRG was properly named as the landlord in this matter. The tenancy agreement only identifies CRG as the landlord. I find that the clause in the tenancy agreement referring to the owner is void for uncertainty, particularly as it fails to identify the owner by name. Under the *Residential Tenancy Act*, the definition of "landlord" includes an agent of the landlord who exercises powers and performs duties under the Act, the tenancy agreement or a service agreement. JS, an agent of CRG who was not the tenant, signed the tenancy agreement. CRG received a security deposit and rent payments from the tenant. CRG was therefore clearly exercising powers and performing duties under the Act.

Section 38 of the Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on April 30, 2011, and the tenant provided his forwarding address in writing on that date. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenant has established a

claim for double recovery of the security deposit, in the amount of \$1000. The tenant is also entitled to recover the \$50 filing fee for this application.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$1050. This order may be filed in the Small Claims Court 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: June 11, 2012.

Residential Tenancy Branch