



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, MNSD, FF
Tenant: MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damages to the rental unit, for compensation for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts. The Tenant applied for the return of a security deposit and pet damage deposit plus compensation equal to the amount of those deposits due to the Landlord's failure to return them as required by the Act and to recover the filing fee for this proceeding.

The Tenant filed her application for dispute resolution on May 10, 2012. The Landlord filed his cross-application for dispute resolution on June 29, 2012 and he received hearing packages to serve on the Tenant on July 3, 2012. The Parties agree that the Landlord served the Tenant with his application for dispute resolution by registered mail on July 4, 2012 although advised by an Information Officer to serve it *in person* no later than July 4, 2012 due to the closeness of time of the hearing. The Tenant received the Landlord's hearing and evidence packages on July 5, 2012.

RTB Rule of Procedure #5 says that "a party making a cross-application must file an application for dispute resolution and serve it in accordance with Rule 3." Rule 3 says that copies of all evidence must be filed together with the Application for dispute resolution and served on the other party at least 5 days (ie. excluding the first and last days) prior to the hearing. I find that the Landlord has not complied with the rules regarding service of his application for dispute resolution, however counsel for the Landlord argued that the Tenant was not prejudiced by the late service as she had just participated in a Small Claims Action (brought by the Landlord), regarding the same subject matter. With all due respect, I disagree. The Landlord's claim in this matter is for compensation of \$13,000.00 and he submitted over 80 pages of documentary evidence in support of it. I also find that the Landlord has provided no reason why he delayed in filing his application in a more timely fashion given that he received the Tenant's application almost 2 months ago. Consequently, I find that the Landlord's application must be dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit and pet damage deposit?

Background and Evidence

This tenancy started on or about October 15, 2008 and ended on May 1, 2011 when the Tenant moved out. Rent was \$1,600.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$800.00 and a pet deposit of \$800.00 on October 8, 2008.

The Parties agree that the Landlord did not offer the Tenant an opportunity to complete a move in condition inspection report. The Parties also agree that they met on May 7, 2011 to do a move out inspection but that when the Landlord pointed out damages, the Tenant got upset and left. The Landlord did not complete the move out condition inspection report. The Parties further agree that the Tenant did not give the Landlord written authorization to keep the security deposit or pet damage deposit and the Landlord has not returned them to the Tenant.

The Parties also agree that on May 1, 2011, the Tenant left a business card and the keys to the rental unit in a baggie and put them through the Landlord's mail slot. The Tenant wrote on the back of the business card, "for correspondence, you can contact me at work." The Landlord claimed he did not believe this was the Tenant's forwarding address because it was her workplace. The Tenant said she believed this constituted her forwarding address in writing although she admitted that she did not request that her security deposit and pet damage deposit be sent there. The Tenant said the address on her application for dispute resolution is her current forwarding address.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit and pet damage deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he may not offset those damages from the security deposit or pet damage deposit but must return them to the Tenant within 15 days of receiving her forwarding address in writing.

I find that the Landlord breached s. 23 of the Act by failing to offer the Tenant an opportunity to complete a move in condition inspection report. I also find that the Landlord breached s. 35 of the Act by failing to offer the Tenant a second opportunity to complete a move out condition inspection report and to complete such a report. Consequently, I find that the Landlord's right to keep the Tenant's security deposit and pet damage deposit **for damages to the rental unit** was extinguished. A Landlord still retains the right to hold the security deposit and pet damage deposit for other damages such as a loss of rental income provided that the Landlord files an application for dispute resolution for such a claim within 15 days of receiving the Tenant's forwarding address in writing.

However, I cannot conclude that the Tenant has complied with s. 38(1) by providing the Landlord with a forwarding address in writing. In particular, I find that the Tenant was not reasonably clear that the address on the business card given to the Landlord on May 1, 2011 was the address to which the security deposit and pet damage deposit was supposed to be sent. Consequently, I find that the Tenant has not provided the Landlord with her forwarding address in writing for the purposes of s. 38(1) of the Act. Furthermore, s. 39 of the Act says that a Tenant's right to the return of a security deposit is extinguished if she does not give the Landlord a forwarding address in writing within one year of the end of the tenancy. Given that the tenancy ended on May 1, 2011, I find that the Tenant's right to the return of the security deposit is now extinguished.

Where both parties have extinguished their rights to a security deposit or pet damage deposit, RTB Policy Guideline #17 says at p.1 that the party who breached their obligation first will bear the loss. In this case, I find that the Landlord breached his obligations under the Act first by failing to complete a move in condition inspection report with the Tenant. The Tenant stated at the hearing that her forwarding address is the same as the address for service set out on her Application for Dispute Resolution. Consequently, I find that the Landlord now has the Tenant's forwarding address in writing for the purposes of s. 38(1) of the Act.

This means that within 15 days of the date of this Decision the Landlord must either file an application for Dispute Resolution to make a claim against the security deposit and pet damage deposit for damages other than damages to the rental unit or alternatively, he must return the security deposit and pet damage deposit to the Tenant. If the Landlord fails to take one of these 2 options, then the Tenant may reapply for the return of her security deposit and pet damage deposit together with compensation equal to the same as provided for under s. 38(6) of the Act.

Conclusion

The Landlord's application for compensation and to keep a security deposit and pet damage deposit is dismissed with leave to reapply. The Landlord's application to

recover the filing fee for this proceeding is dismissed without leave to reapply. The Tenant's application for the return of a security deposit and pet damage deposit is dismissed with leave to reapply (but only on the terms set out above). The Tenant's application to recover the filing fee for this proceeding is dismissed without 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*.

Dated: July 10, 2012.

Residential Tenancy Branch