

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing and evidence submitted, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

Both parties agreed that this Tenancy began on June 1, 2009 on a fixed term tenancy until May 31, 2011 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$2,400.00 payable on the 1st of each month and a security deposit of \$1,200.00 was paid. Neither party have submitted a condition inspection report for the move-in or move-out.

The Tenant states that the Tenancy ended on June 3, 2012 when he left the 1 keys on the counter of the rental and vacated with all of his belongings. Both parties agreed that a “walk thru” occurred on June 3, 2012 with both parties. The Landlord disputes this stating that the 1key were discovered on June 4, 2012, but that the Tenant never notified the Landlord and that there were missing keys to the rental, which the Tenant has confirmed in his testimony. The Tenant states that he emailed his forwarding address in writing to the Landlord after the end of tenancy on June 4, 2012, but is not able to provide a date. The Landlord states that he cannot confirm this, but that his details indicate that the Tenant’s forwarding address in writing was first received in the Tenant’s Application for Dispute that was filed July 17, 2012.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I find that the Tenancy ended on June 4, 2012 when the Landlord discovered the returned keys in the rental unit. Neither party have been able to provide any details of the date when the forwarding address in writing was received. However, the Landlord has confirmed that the \$1,200.00 security deposit was not returned to the Tenant and has not filed for dispute resolution to dispute the return of the security deposit. The Tenant has been successful in his application for return of the \$1,200.00 security deposit. I find that as the Tenancy has ended and both parties have provided differing evidence as to the forwarding address in writing being provided to the Landlord, that section 38 (6) (b) of the Act is not applicable.

The Tenant has also mentioned an additional \$100.00 for his monetary claim, but failed to provide any details in his application. I find that it would be prejudicial to consider this as part of the application as no notice of dispute was provided to the Landlord for this aspect. This portion of the Tenant's claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The Tenant has established a claim for the \$1,200.00 security deposit. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$1,250.00. This order may be filed in the Small Claims Division of the Provincial Court and be enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$1,250.00.

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: August 31, 2012.

Residential Tenancy Branch