



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit, for compensation for the loss of personal property and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord on July 12, 2012 with the Application and Notice of Hearing (the “hearing package”) by registered mail to the Landlord’s residence which is also the rental unit address. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up the mail). Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit?
2. Is the Tenant entitled to other compensation and if so, how much?

Background and Evidence

The Tenant said he rented a room in the rental property from the Landlord who also resided there with his spouse. The Tenant said the Landlord is not the owner of the rental property. The Tenant said the tenancy started on May 1, 2012 and ended on June 30, 2012 when the Landlord locked him out of the rental property. The Tenant said rent was \$450.00 per month and that he paid a security deposit of \$200.00.

The Tenant said he verbally requested that the Landlord return his security deposit but it has not been returned to him and he did not give the Landlord written authorization to keep it.

Analysis

Section 4(c) of the Act says “*the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.*” Based on the Tenant’s evidence that the Landlord is not the owner of the rental property, I find that the Act applies to this dispute.

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 or to make an application for dispute resolution to make a claim against it. 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 then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the tenancy ended on June 30, 2012 however I also find that the Tenant has not complied with s. 38(1) of the Act by providing the Landlord with his forwarding address in writing. Although the Tenant argued that the address set out on his application for dispute resolution is his forwarding address, I find that this is not a forwarding address for the purposes of s. 38(1) but rather an address for service of documents in this proceeding. Consequently, the Tenant’s application for the return of a security deposit is dismissed with leave to reapply once he has provided the Landlord with his forwarding address in writing.

I also find that the Tenant’s application for compensation for missing items is premature. The Tenant must take steps first to determine if the Landlord has those items in his possession, request their return and failing their return, he must provide evidence of their value. Consequently, this part of the Tenant’s application is also dismissed with leave to reapply. As the Tenant has been unsuccessful on his application, his claim to recover the cost of the filing fee from the Landlord for this proceeding is dismissed without leave to reapply.

Conclusion

The Tenant’s application for the return of a security deposit and for compensation for missing personal possessions is dismissed with leave to reapply. 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: September 19, 2012.

Residential Tenancy Branch