



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking a monetary Order for compensation for damage or loss, recovery of the security deposit and recovery of the filing fee paid for this application.

The landlord did not appear at the hearing. The tenant gave evidence that he served the landlord with the Application for Dispute Resolution hearing package along with his evidence by way of registered mail sent August 9, 2012 returned as unclaimed. Based on this evidence I am satisfied that the landlord is deemed served with notice of this claim and this hearing.

The tenant gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the Orders sought?

Background and Evidence

The tenant testified that he moved into the rental unit on May 20, 2012 and vacated on May 22, 2012. The tenant testified that rent was fixed at \$2,400.00 per month. The tenant says he paid all of June's rent along with the \$1,200.00 security deposit along with all rent due for June 2012. The tenant entered a written Tenancy Agreement into evidence dated June 18, 2012 and signed by the tenant on that date but it is not signed by the landlord.

The tenant submits that

I paid for all June & deposit, spent 2 nights in residence and could not continue, bed uncomfortable, no internet, garage key not provided, both were included but could not sleep. I notified by email to end agreement June 23 spent 2 nights cost me \$4,500.00

(reproduced as written)

In the details of dispute the tenant indicating that he is claiming \$2,400.00 for July's rent and 2 x the \$1,200.00 deposit for a total of \$4,800.00 plus recovery of the filing fee.

The tenant testified that he did not provide his forwarding address in writing to the landlord because the landlord already knew his forwarding address. The tenant says he never left the address he resided at when he entered into this tenancy agreement and the landlord was aware of this.

The tenant stated that he was conducting the hearing while getting off a plane and he did not have his evidence with him.

Analysis

With respect to the security deposit, Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (Section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The triggering event is the provision by the tenant of his forwarding address to the landlord. In this case I find that the tenant has failed to prove that he gave his forwarding address in writing to the landlord. In fact, in his own evidence the tenant stated that he did not provide his forwarding address in writing because he believed the landlord already had his forwarding address.

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*.

With respect to the claim to recovery rents paid, in his written submissions the tenant says he is seeking recovery of rent for June then he states he is seeking recovery of rent for July as opposed to June. The tenant also submitted that his tenancy lasted only 2 nights (May 20-22, 2012) at which point he says he could no longer reside in the rental unit and he gave notice "...by email..." to end the tenancy effective June 23. Not only is this not proper notice under the Act but given the discrepancies as to which

months' rent the tenant is claiming (June or July) and the lack of documentary evidence such as cancelled cheques or receipts to show the rents paid, I am not satisfied that the tenant has proven that he paid any rents at all or that any rents that may have been paid should be reimbursed to him.

It should also be noted that throughout these proceedings the tenant was impatient, combative and unwilling to provide answers to simple questions. He also became abusive using expletives rather than supplying the testimonial evidence necessary to prove his claims. Even with assistance I was unable to elicit from the tenant the information required to prove his claim. I therefore find that the tenant has failed to meet the burden of proving his claim and his claim is therefore dismissed.

Dated: October 23, 2012.

Residential Tenancy Branch