



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of his pet damage and security deposits (the deposits). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

Preliminary Matters

At the commencement of the hearing, the landlord's property manager testified that he was actually the landlord for this tenancy as he rented out a number of rooms for the landlord to tenants in this rental building. He said that he was once a tenant in this building and had sublet rooms to other tenants to defray his rental costs for the whole building. He said that after he moved out, he entered into an arrangement with the owner of the property whereby he would continue renting rooms to tenants and forward the rental proceeds to the landlord. He said that the owner of this building had never been involved directly in any communication with tenants in this rental building. He testified that he had no tenancy agreement with the landlord and acted as the landlord's property manager for this building. Under these circumstances, I ruled that the property manager was acting as the owner's agent and that the landlord was correctly identified in the tenant's application for dispute resolution. Under the *Act*, an agent, an owner of a rental property, or both can be identified as respondent(s) in a tenant's application for dispute resolution.

The landlord's property manager (the landlord) testified that he received a copy of the tenant's dispute resolution hearing package by registered mail on or about November 20, 2012. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

The landlord testified that on December 10, 2012, he attempted to serve the tenant with a copy of his written evidence package at the address identified in the tenant's application for dispute resolution. The landlord testified that he was unable to obtain an answer at the tenant's door, tried an upstairs rental unit, and eventually left a copy of his

written evidence package for the tenant in a joint mailbox at the tenant's mailing address. The tenant testified that he did not receive this written evidence.

Section 90 of the *Act* establishes that documents placed in a party's mailbox at a mailing address identified in an application for dispute resolution are deemed served on the 3rd day after their deposit in that mailbox. Based on the landlord's sworn testimony, I accept that the landlord's written evidence was deemed served on December 13, 2012. However, this evidence was served after the time frames set out in the Residential Tenancy Branch's (RTB's) Rules of Procedure, which require service within 7 days of a hearing. The tenant did not have copies of the landlord's evidence, some of which was contentious in this matter. For example, the tenant denied having signed a July 30, 2012 Mutual End to Tenancy requiring him to vacate the rental unit by September 1, 2012. He also denied the landlord's claim that the amount of the pet damage and security deposits were each \$450.00. The landlord's late written evidence included a copy of his December 23, 2010 receipt for the tenant's payment of \$450.00 for each of these deposits. I have taken the landlord's late service of this evidence into consideration.

The tenant and his mother, who assisted him with this portion of his application, testified that they did not send the landlord a copy of the tenant's written evidence in advance of this hearing. As the landlord was not served with this written evidence, I advised the parties that I could not take into account this evidence.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits? Is the tenant entitled to a monetary award equivalent to the amount of his pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

This periodic tenancy commenced on or about January 1, 2011. The tenant claimed that the monthly rent was initially set at \$1,000.00, payable in advance on the first of each month. The landlord maintained that the rent was always set at \$900.00 per month, plus 1/3 of the utilities. Both parties agreed that by the end of this tenancy, the monthly rent was set at \$900.00.

The tenant's application for a monetary award of \$1,000.00 was for a return of his pet damage and security deposits. The parties agreed that the landlord has not returned any portion of the deposits, the amount of which remains in dispute, to the tenant.

Analysis

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 in writing, to either return the deposits 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 deposits, and the landlord must return the tenant's deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address in writing.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a deposit if "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."

In this case, the tenant testified that he was uncertain when his tenancy ended, but believed it was later than September 12, 2012. However, there is more convincing evidence that the tenant vacated the rental unit by September 12, 2012, and returned the key to an upstairs tenant in this rental building. The tenant gave sworn testimony that he provided his forwarding address to the landlord by way of a telephone call on September 15, 2012. Both parties agreed that the tenant has not provided his forwarding address in writing to the landlord.

Although the landlord has neither returned the tenant's deposits in full nor applied for authorization to retain these deposits, I find that the landlord's obligation to return the deposits has not yet been triggered. Since the landlord's obligations have not yet commenced, I find that the tenant's application is premature and I dismiss the tenant's application with leave to reapply.

At the hearing, the landlord confirmed that he now has the tenant's following mailing address as set out in the tenant's application for dispute resolution and as reiterated at the hearing:

Basement – Address
Somewhere BC

As discussed at the hearing, I find that the landlord has received notice of the tenant's forwarding address as of December 19, 2012, the date of this teleconference hearing. In accordance with powers granted to me under section 62 of the *Act*, I order that the 15-day time period afforded to the landlord to take actions pursuant to section 38 of the *Act* with respect to the tenant's pet damage and security deposits commences on December 19, 2012.

At the hearing, the tenant and his mother asked for clarification of the mailing address for the owner of the property and the landlord's property manager. In an effort to reduce the possibility of further problems regarding the service of documents, I order that for the purposes of this tenancy, the mailing address for the owner of the property, Mr. VTD, landlord is as follows:

VTD

Address

City BC

This address was confirmed as correct by the landlord's property manager who attended the hearing on the landlord's behalf.

Similarly, I order that for the purposes of this tenancy, the mailing address for the landlord's property manager/agent is as follows, again as confirmed at this hearing by the landlord's property manager/agent:

GR

Address

City BC

Should either party submit future applications with respect to this tenancy, they are to serve one another at the above addresses. In that event, they are to serve new copies of any written evidence upon which they intend to rely to both the RTB and the other party more than 7 days in advance of any future dispute resolution hearing.

Conclusion

I dismiss the tenant's application for dispute resolution with leave to reapply. I find that the 15-day time period afforded to the landlord to take actions pursuant to section 38 of the *Act* with respect to the tenant's pet damage and security deposits commences on December 19, 2012. 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: December 20, 2012

Residential Tenancy Branch