



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy because the tenant no longer qualifies for subsidized housing; for a Monetary Order to recover the security deposit; and to recover the filing fee paid for this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 01, 2012 . Mail receipt numbers were provided by the tenant in verbal testimony. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues to be Decided

- Is the tenant entitled to cancel a Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The tenant testifies that this month to month tenancy started on December 01, 2011. Rent for this unit was \$850.00 per month due on the first day of each month. The tenant paid a security deposit of \$425.00 on or about December 01, 2011.

The tenant testifies that she has not been served a Notice to End Tenancy because the tenant no longer qualifies for subsidized housing. The tenant testifies that she was served a 10 Day Notice to End Tenancy for unpaid rent and moved from the rental unit on December 15, 2012 because the tenant states the landlord would not carry out necessary repairs to the unit.

The tenant seeks to recover her security deposit from the landlord but testifies that she has not yet given the landlord her forwarding address in writing.

Analysis

With regard to the tenants application to recover her security deposit; section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution if the landlord is entitled to do so.

The tenant agrees she has not provided her forwarding address to the landlord. Consequently, I find the tenant's application is premature and the tenant is not entitled, at this time, to the return of the security deposit until the tenant has provided her forwarding address to the landlord in writing. This section of the tenants claim is therefore dismissed with leave to reapply.

The tenant has not been served with a Two Month Notice to End Tenancy and has moved from the rental unit. Therefore this section of the tenants claim has no merit and is dismissed without leave to reapply.

The tenant has applied to recover a filing fee paid for this application however the tenant did not pay a filing fee and this section of the tenants claim is dismissed.

Conclusion

The tenant may file a new application to recover the filing fee if the landlord has not complied with section 38 of the *Act* after the tenant has provided the landlord with her forwarding address in writing.

The remainder of the tenant's application 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: January 08, 2013.

Residential Tenancy Branch

