



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for an order to keep the security deposit or pet damage deposit and to recover the filing fee for the Application.

The Tenant filed for other relief, and explained during the hearing that he filed his Application because he was seeking to have the security deposit returned.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The parties entered into a standard statutory form, written tenancy agreement. The Tenant was to pay \$2,500.00 a month in rent, on the first day of the month. In July of 2011, the Tenant paid the Landlord a security deposit of \$1,250.00.

On August 31, 2012, the Tenant sent the Agent for the Landlord an email which stated: "I'd like to give our notice that we're moving out on October 1st."

On September 3, 2012, the Tenant emailed the Agent for the Landlord again asking if the Agent received the first email.

The Agent for the Landlord replied in an email on September 3, 2012, that this was the first time he had seen the Tenant's email.

One of the Agents for the Landlord testified during the hearing that they believed the Tenant did not give proper a Notice to End Tenancy. They testified that email is not allowed as a service method, and that the Tenant did not include the address of the rental unit, and did not sign or date the email.

The Agent also testified they were unhappy that the Tenant sublet the rental unit without prior written consent, as required under the Act and tenancy agreement.

The Agent testified they wanted the entire month of lost rent due to the notice the Tenant gave.

The Tenant testified that he gave the email as notice he was ending the tenancy. He testified he had emailed the Agents for the Landlord in the past, and did not know where the Landlord lived to give her the notice. He testified he vacated the rental unit in September of 2012.

The Tenant was upset that the Agent for the Landlord had cashed his October 2012 rent cheque. He submitted that it took about a week to have this returned to him and he had to beg for it repeatedly. He testified he had no reason to believe the notice to end tenancy was not accepted.

In reply, the Agents for the Landlord testified that the address for delivery is as set out on the tenancy agreement and is for the Agents for the Landlord.

The Tenant acknowledged this is the address where he was sending rent cheques.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the following.

I find the Tenant has breached sections 45 and 52 of the Act, and the tenancy agreement, by failing to give the Landlord the required Notice to End Tenancy.

Under the Act and the standard form tenancy agreement the Tenant was required to give the Landlord a written Notice to End Tenancy of at least one month, calculated from the day **before** rent is due. This means the Notice given by the Tenant should have ended the tenancy on or before September 30, 2012. The Tenant's notice was for the first day of October, meaning the Tenant has carried his notice into the following rental month. By giving his notice for October 1st 2012, the Landlord would have been entitled to rent for the entire month of October 2012, since October 1st is the first day of a new rental period.

If the Tenant wanted to end the tenancy on September 30, 2012, the latest the Tenant could have given the Landlord a notice to end tenancy was August 31, 2012, the day before the September rent was due. This would have given the Landlord the correct Notice to End Tenancy under the Act and tenancy agreement.

Furthermore, the Tenant is required under section 52 of the Act to have given the Landlord a Notice to End Tenancy in writing, with a signature, and set out the address of the rental unit, along with the effective date of the notice. This Notice has to be served in accordance with the Act and **email is not** a recognized means of service under the Act.

For these reasons, I find the Landlord is entitled to one month of rent, as the Tenant failed to give a valid Notice to End Tenancy. However, the Landlord did not apply for a month of rent, rather the Landlord simply applied to keep the security deposit of \$1,250.00, which is the equivalent of ½ a months' rent. This is the sum sought on the Application.

I find it would be against the principles of natural justice to order the Tenant to pay more than the amount claimed for in the Landlord's Application. The Landlord only claimed for \$1,250.00, plus the filing fee for the Application, and may not now add another \$1,250.00 to the claim.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches of the Act and tenancy agreement by the Tenant have caused the Landlord to suffer a loss. I have determined that the Landlord will keep the security deposit in the amount of \$1,250.00 in full satisfaction of the claim. I also order the

Tenant to pay the Landlord the sum of \$50.00 for the recovery of the filing fee for the Application.

For the above reasons, I find that the Tenant's Application must be dismissed without leave to reapply.

Conclusion

The Tenant's claim is dismissed.

The Landlord has established a monetary claim.

I order the Landlord may retain the security deposit in full satisfaction of the claim, and I grant the Landlord a monetary order for the balance due of \$50.00.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 07, 2013.

Residential Tenancy Branch