



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Abougosh Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:38 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Prior to the hearing, the landlord provided written evidence noting that the tenants vacated the rental unit in September 2013. At the hearing, the landlord testified that the tenants vacated the rental unit on September 18, 2013. As such, the landlord confirmed at the hearing that the landlords already had possession of the rental unit at the time they applied for dispute resolution. The landlord withdrew the application for an Order of Possession.

Issues(s) to be Decided

Has the landlord served the application for dispute resolution to the tenants in accordance with section 89(1) of the *Act*? If so, is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background, Evidence and Analysis– Service of Documents

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

The landlord entered written evidence, confirmed by sworn oral testimony at the hearing, that the landlord sent the dispute resolution hearing packages, including notice of this hearing, to both tenants at the dispute address by registered mail on October 10, 2013. The landlord provided Canada Post Tracking Numbers and Customer Receipts to confirm these registered mailings to the tenants at the dispute address. The landlord also provided written evidence that both hearing packages were returned to the landlord by Canada Post as unclaimed. The landlord confirmed that by the time the hearing packages were sent to the tenants the landlord knew that the tenants no longer resided at the dispute address. As the tenants refused to provide their forwarding address to the landlord, the landlord sent these packages to the only address available, the dispute address.

At the hearing, I advised the landlord of my finding that the tenants have not been served in a manner required by section 89(1) of the *Act*. As outlined above, section 89(1)(c) of the *Act* requires that applications for dispute resolution, part of the landlord's dispute resolution hearing package, must be sent to the address at which the respondent resides. As I find that this did not occur, I cannot consider the landlord's application for a monetary Order and dismiss this portion of the landlord's application with leave to reapply.

Background and Evidence – Security Deposit

This tenancy commenced as a one-year fixed term tenancy on July 1, 2012. When the initial term expired, the landlord said that the tenants signed a new one-year fixed term tenancy on June 30, 2013.

Monthly rent was set at \$975.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold the tenants' \$487.50 security deposit paid on May 25, 2012.

The landlord applied for a monetary award of \$1,637.50, which included \$1,150.00 in unpaid rent owing from September 2013, and a request to retain the tenants' security deposit as a result of non-payment of rent and damage arising out of this tenancy.

The landlord entered into written evidence a copy of a September 23, 2013 document signed by the female tenant in which she authorized the landlord "to retain the balance of my security deposit and pet deposit to cover...outstanding rent." The tenant crossed out the landlord's typed reference that this deposit was also "to cover extensive cleaning, damages." The landlord also entered into written evidence a copy of the joint move-out condition inspection report of September 23, 2013, in which the female tenant signed another agreement allowing the landlord to retain the security deposit for this tenancy in order to "cover owed rent."

Analysis – Security Deposit

Section 38(4)(a) of the *Act* allows a landlord to retain an amount from a security 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." As I find that the female tenant has given the landlord written authorization to retain the security deposit, I allow the landlord to retain the security deposit for this tenancy. No interest is payable over this period.

I dismiss the remainder of the landlord's application, as the landlord has not served the tenants with a copy of the landlord's dispute resolution hearing package in accordance with the *Act*.

Conclusion

As the landlord's application for a monetary Order has not been served to the tenants in a method required under section 89(1) of the *Act*, I dismiss the landlord's application for a monetary Order with leave to reapply.

I order the landlord to retain the tenants' security deposit in accordance with the written agreement provided by the female tenant.

The landlord's application for an Order of Possession is withdrawn.

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: November 28, 2013

Residential Tenancy Branch

