



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing dealt with an application by the tenant for return of the security deposit and pet damage deposit. Although served with the Application for Dispute Resolution and Notice of Hearing by personal service on November 1, 2013, the landlord did not appear.

Preliminary Issue

The tenant filed this application for dispute resolution on October 15, 2013. The tenant did not have a mailing address for the landlord but he did know that the landlord occasionally worked on the weekends at a particular business. The tenant went to the business every weekend after he received the hearing package from the Residential Tenancy Branch. It was not until November 1 that the landlord was working and the tenant was able to personally serve the landlord with the hearing package.

Section 59(3) of the *Residential Tenancy Act* stipulates that a person making an application for dispute resolution must give a copy of it to the other party within three days of making it or within a different period as specified by an arbitrator. Section 72 allows an arbitrator to order that a document has been sufficiently served for the purpose of the Act on a date that the arbitrator specifies.

Although the landlord was served more than three days after the application for dispute resolution was filed, he still had more than two months before the date set for the hearing to prepare, serve and file any evidence he wished in response to the tenant's claim. The landlord was not prejudiced by the delay in service of the application for dispute resolution and notice of hearing and therefore I order, pursuant to section 71(b) that the landlord was sufficiently served for the purposes of the *Residential Tenancy Act* on November 1, 2013.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This fixed term tenancy commenced April 5, 2012 and the term was to end September 30, 2012. The written tenancy agreement provided that upon expiry of the term the tenancy could continue on a month-to-month basis. The agreement also provided that the monthly rent of \$1150.00 was to be paid on or before the first day of the month.

The landlord was renting this unit from someone else. His agreement was for a one year fixed terms commencing February 1, 2012 and continuing upon expiry of the term on a month-to-month basis at a monthly rental of \$1600.00.

The owner of the unit gave written consent to Sublease to the landlord for this arrangement.

On April 11, 2012 the tenant paid the landlord the sum of \$2225.00: \$1350.00 towards rent, \$575.00 for the damage deposit; and \$300.00 for the pet damage deposit.

The landlord was travelling to South America on April 17.

On April 11 the parties signed an amendment to the tenancy agreement which stated that the tenant would prepay the rent for the balance of the fixed term as follows:

- Payment of \$1600.00 directly to the owner of the unit for the May rent; and,
- Payment of the sum of \$3850.00 to the landlord on April 11. This amount was calculated as five months rent at \$115.00 per month less the \$200.00 overpayment for the April rent and the \$1600.00 payment to the owner of the unit.

The amending agreement also provided that if "Beyond the date of the fixed tenancy agreement if the Landlord plans to return to the property the Landlord will give the tenant at least one month's written notice. The tenancy agreement will then be considered terminated on the last day of the following month in which the notice was given."

The landlord did not pay the June rent to the owner, who obtained an order of possession. The tenant made a deal with the owner to stay in the unit to the end of July in return for payment of \$1400.00.

The landlord did return to Canada from South America but he never provided the tenant with any contact information such as an address. They did text each other and although many promises were apparently made to the tenant, no payment was ever made.

The tenant says he was given leave in a previous proceeding to make an application to the Residential Tenancy Branch. On the previous hearing his application was dismissed with leave to re-apply because he had been unable to locate the landlord in order to effect service.

Analysis

As this is the third time the tenant's application has been filed by the Residential Tenancy Branch without any apparent discussion of the applicability of the *Residential Tenancy Act* to this dispute I find that there has been at least an implied decision in those previous proceedings that the Act does apply to this dispute and I have jurisdiction to make the order requested.

Although the tenant gave evidence about a larger claim against the landlord for some reason he only applied for return of the security deposit and pet damage deposit and further, although he paid a total of \$875.00 for the two deposits, he limited his claim to \$750.00.

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit.

Section 39 provides that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy the landlord may keep the security deposit, pet damage deposit or both and the tenant's right to return of the deposit(s) is extinguished.

The tenant had not contact information for the landlord – in fact, it appears the landlord went to some effort to keep his contact information away from the tenant – and therefore the tenant was unable to provide the landlord with his forwarding address in writing. As the landlord did not comply with section 13(2)(e) of the Act – the requirement that a landlord provide the tenant with the address for service of the landlord or the landlord's agent – he cannot rely upon the provisions of section 39.

I find that service of the application for dispute resolution on the landlord did meet the tenant's obligation to provide his forwarding address in writing. The landlord had ample notice that the tenant was claiming for return of the security deposit and pet damage

deposit and did not respond. However, he may not have understood that receipt of the tenant's forwarding address may make him liable to the section 38(6) penalty, particularly since the tenant's claim was limited to \$750.00, so no order pursuant to section 38(6) will be made. The landlord is put on notice that he has fifteen days from the date this decision is served on him to file any application against the security deposit or pet damage deposit or he may be liable, on application by the tenant, to the section 38(6) penalty.

I find that the tenant is entitled to payment of the amount claimed, \$750.00, as a partial refund of the security deposit and pet damage deposit.

As the application for dispute resolution did not claim any refund of rent paid to the landlord no determination of that issue has been made. The tenant may make any other claims against the landlord in a separate application for dispute resolution.

Conclusion

I find that the tenant has established a total monetary claim of \$800.00 comprised of return of a portion of the security deposit and pet damage deposit in the amount of \$750.00 and the \$50.00 fee paid by the tenant for this application and I grant the tenant an order under section 67 in this amount. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 03, 2014

Residential Tenancy Branch

