Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC, MNSD

Introduction
This hearing was scheduled to deal with an application by the tenant for a monetary order in an amount equal to double the deposits paid to him. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the landlord advised that he had filed evidence in support of a claim against the deposit and that, based upon advice received from an information officer at the Residential Tenancy Branch, had not filed his own application for dispute resolution. The evidence was not on the file so had probably been misfiled.

Although in situations where the landlord has not filed an application for dispute resolution claiming against the deposit(s), even though he should, I will normally hear and decide the landlord's claim as well as the tenant's, if the tenant consents to my doing so, in this case where there was neither claim nor evidence I did not offer that option to the parties. I told the parties I would be hearing and deciding the tenant's application only. The parties were advised that the landlord could file his own application for dispute resolution for any claims he may have against the tenant after the hearing.

Issue(s) to be Decided
Is the tenant entitled to payment of double the security deposit and pet damage deposit?

Background and Evidence
This month-to-month tenancy commenced April 12, 2012. The monthly rent of $800.00 was due on the first day of the month. The tenant paid a security deposit of $400.00, a pet damage deposit of $400.00, and a key deposit of $100.00.

The tenant said a move-in inspection was not conducted and a move-in condition inspection report was not completed. The tenant said they were and a copy of the condition inspection report was included in the evidence he had filed.

The tenant said he moved out October 1; the landlord said the tenant moved out November 2 or 3.

The tenant said that based upon advise received from an information officer with the Residential Tenancy Branch he sent the landlord a postcard with his new address by regular mail on October 13. The address on the post card was the same address he gave as his address for service on this application for dispute resolution. The landlord said he did not receive the tenant's post card and he had no address for the landlord until he received the application for dispute resolution.

The parties agree that because of the hostilities between them a move-out inspection was not conducted and a move-out condition inspection report not completed. They also agree that the landlord has neither refunded any of the deposits or served the tenant with an application for dispute resolution.

Analysis

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.

As I tried to explain to the parties in the hearing on an application for return of double the deposit the tenant must establish the following facts:

- The amount of the deposit paid.
- The date the tenancy ended.
- The date the tenant gave the landlord his forwarding address in writing.
- That he has neither been paid the deposit nor been served with an application for dispute resolution from the landlord claiming against the deposit.

The condition of the unit a the beginning or end of the tenancy; the conduct of either party; and any claims the landlord may have against the tenant are irrelevant to this particular legal issue.

I accept the landlord's evidence that a move-in inspection was conducted and a move-in condition inspection report completed.

I accept the tenant's evidence that he sent the landlord a postcard with his new address before filing this application for dispute resolution. Although ordinary mail is not the best means of sending any notice because there is no proof that the addressee ever received it, it is one of the means of service provided for by section 88 of the *Residential Tenancy Act.* Section 90 provides that a document given or served by mail is deemed delivered on the fifth day after it is mailed, which in this case would be October 8.

I make no finding as to when this tenancy ended as for the purposes of making a decision on this particular application it is not necessary for me to do so. If the tenancy ended October 1 the landlord had fifteen days from the deemed date of delivery of the tenant's forwarding address in writing, as that was the later of the two dates, to file his application for dispute resolution or refund the deposits. If the tenancy ended on November 3 the landlord had fifteen dated from that date, as that was the later of the two dates, to file his application for dispute resolution or refund the deposit. Whatever date the tenancy ended the landlord did not comply with section 38(1) within the required time and is therefore subject to the section 38(6) penalty.

I find that the tenants are entitled to an order that the landlord pay them the sum of $1800.00, representing double the security deposit, pet damage deposit and key deposit.

Conclusion

A monetary order in favour of the tenant has been made. 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 21, 2014

Residential Tenancy Branch