



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing concerns the tenant's application for a monetary order reflecting the double return of the security deposit / in addition to recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this tenancy which began sometime in 2008. Monthly rent was due and payable in advance on the first day of each month. Rent at the start of tenancy was \$1,736.00, and by the time tenancy ended in 2011 rent was \$1,786.00. A security deposit of \$868.00 was collected.

Evidence submitted by the tenant includes a "Mutual Agreement to End a Tenancy" document, pursuant to which the tenancy was to end November 30, 2011. The document is dated October 28, 2011, however, it bears only the tenant's signature. Further evidence submitted by the tenant includes a copy of his cheque dated November 1, 2011, which is made payable to the landlord in the full amount of November's rent. The tenant testified that the cheque was cashed and that he had finished removing all of his possessions from the unit between November 25 and 28, 2011. The tenant was unable to provide an exact date or describe the manner in which he may have provided the landlord with his forwarding address. Rather, the tenant simply testified that the landlord's agent was aware of his forwarding address.

The landlord's agent testified that he could not recall the details around how / when the subject tenancy ended, but stated that police had been involved in some way and that the agreement reached with the tenant was that he would be responsible for payment of November's rent. Evidence submitted by the landlord includes a copy of a tenancy

agreement for the subject unit with respect to new renters. The start date of the new tenancy is shown as November 16, 2011. The landlord's agent takes the position that as the subject tenancy ended prior to November 16, 2011, and that as the tenant's application for dispute resolution was filed more than 2 years after that, and that as the tenant failed to provide his forwarding address as required within 1 year after the end of his tenancy, time has run out in relation to the Branch's authority to hear the dispute.

Analysis

Section 38 of the Act speaks to the **Return of security deposit and pet damage deposit**. In part, this section 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 or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit. It is this provision of the Act which the tenant relies on in his application for compensation reflecting the double return of the original security deposit.

Section 60 of the Act speaks to **Latest time application for dispute resolution can be made**, and provides in part as follows:

60(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

Based on the documentary evidence and testimony, I find that the subject tenancy ended sometime prior to November 16, 2011, which is the date I find that new renters took possession of the unit pursuant to a written tenancy agreement. As the tenant's application for dispute resolution was filed on November 29, 2013, I find that his application was filed outside of the 2 year statutory time limit.

Further to the above, section 39 of the Act addresses how the **Landlord may retain deposits if forwarding address not provided**:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

As previously noted, the tenant's application for dispute resolution was filed on November 29, 2013. I find that the tenant's address is documented on his application, and that the application was served on the landlord either on or after November 29, 2013. However, there is no documentary evidence before me which satisfies the statutory requirement that the tenant "give a landlord a forwarding address in writing within one year after the end of the tenancy."

For all of the above reasons, I find that the tenant's application for a monetary order for compensation reflecting the double return of the security deposit, in addition to recovery of the filing fee must be dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety.

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: March 24, 2014

Residential Tenancy Branch

