



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDS, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application. The details portion of the application claims double recovery of the security deposit.

Both parties appeared and gave affirmed testimony. The tenant provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlord. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 24, 2013. A copy of a tenancy agreement has been provided which is dated August 23, 2013 between the tenant and another landlord. The tenant testified that the landlord named in the tenancy agreement is the ex-spouse of the named landlord. The named landlord took possession of the rental unit during the tenancy. The tenancy ended on February 28, 2014.

The rental amount on the tenancy agreement is \$700.00 per month and the tenant testified that he was told to start to pay rent to the new landlord, so he called the landlord's lawyer for instructions to protect himself. The lawyer provided to the tenant and both landlords a letter confirming that effective January, 2014 rent payments were to be made to the new landlord.

The tenant further testified that the parties had a discussion about rent and agreed to a new rental amount of \$600.00 per month, and there are no rental arrears.

On February 24, 2014 the tenant sent to the landlord a request for return of the security deposit in a letter which was mailed by regular mail to the address on the Tenant's Application for Dispute Resolution, and emailed a copy the same day. Copies of the email and the letter have been provided. The landlord has not responded and has not served the tenant with an Application for Dispute Resolution claiming against the deposit and has not returned any portion of the security deposit.

The landlord testified that he did not sign any rental agreement with the tenant. The landlord's ex-spouse rented out the unit and collected the security deposit. The landlord never even spoke to the tenant until the property was transferred.

The landlord spoke to the ex-spouse in an attempt to get the money to repay the tenant, but was not successful. The ex-spouse stated that the tenant wasn't going to get the security deposit back because he had pets in the rental unit which were not allowed.

Analysis

There is no dispute that the landlord named in this proceeding inherited the rental unit by some matrimonial means, and as such became the landlord. The *Residential Tenancy Act* states that a "landlord" includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and

- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

I am satisfied that the landlord named in this dispute is a landlord as defined in the *Act*.

The *Residential Tenancy Act* requires a landlord to return a security deposit or pet damage deposit in full or apply for dispute resolution claiming against the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord does neither within that 15 day period, the landlord must be ordered to repay the tenant double the amount of the deposits.

In this case, the tenant testified that the landlord was provided with the forwarding address in writing by email on February 24, 2014 but the landlord did not respond. I am not satisfied by the evidence provided what day the landlord received that email, or that it was ever received because the landlord did not respond. However, the tenant also testified that he mailed a copy of the letter containing his forwarding address to the landlord at the address on the Tenant's Application for Dispute Resolution. The *Act* states that documents served in that manner are deemed to have been received 5 days later, which I find is March 1, 2014. The landlord did not deny receiving either the email or the letter by regular mail.

The landlord's position is that the security deposit was collected by the ex-spouse. It is not up to the tenant to determine whether or not the new landlord actually received it from the previous landlord; the tenant is entitled to recovery of that money from the landlord.

I also accept the testimony of the tenant that the security deposit amount paid was \$250.00 which is contained in the tenancy agreement and the landlord has not returned any portion and has not served the tenant with an Application for Dispute Resolution. The landlord did not deny any of that testimony. I further find that the landlord had 15 days from March 1, 2014, or by March 16, 2014 to return the security deposit but failed to do so and the tenant is entitled to double the amount.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$550.00.

This order is final and binding and may be enforced.

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: July 18, 2014

Residential Tenancy Branch

