



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES INTERNATIONAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with applications by both the landlord and the tenant with respect to the above noted tenancy and pursuant to the *Residential Tenancy Act* ("the *Act*"). The landlord applied for authorization to retain all or a portion of the tenant's security deposit pursuant to section 38. The tenant applied for authorization to obtain a return of all or a portion of her security deposit also pursuant to section 38.

The tenant applied for a face to face hearing but did not attend. The landlord applied to appear by teleconference and attended this hearing. Under Rule 10.1 of the Rules of Procedure,

The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, the landlord was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to his application. The application by the tenant was dismissed without leave to re-apply. I note that I did not consider the materials the tenant submitted with respect to her application as she was not present to testify to verify those materials and their service.

The landlord testified that he sent the landlord's Application for Dispute Resolution package on December 30, 2014 by registered mail. He testified that this package was sent to the forwarding address provided to him by the tenant. He provided the Canada Post tracking number for this package. Pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the package on January 4, 2015, five days after its mailing.

Issues to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Background and Evidence

The landlord testified that this tenancy began on September 1, 2014 and was scheduled for a one year fixed term ending August 31, 2015. The landlord submitted a copy of the residential tenancy agreement indicating the rental amount for this unit was \$900.00 payable on the first of each month. The landlord testified that he continues to hold a \$450.00 security deposit paid by the tenant on September 1, 2014. He applied to retain that security deposit.

The landlord testified that the tenant vacated the rental unit on or about September 26, 2014. He testified that she provided no prior notice that she intended to vacate the rental unit and that, on September 26, 2014 he received an email from the tenant stating she had moved. The landlord testified that, within the email, the tenant stated that she would mail the keys and her forwarding address as soon as practicable. He testified that he received both the keys and the tenant's forwarding address by mail four days late, September 30, 2014.

The landlord referred to the rental agreement clause that states, "The tenant will provide the Brokerage with written notice of his or her intentions to vacate the premises. This notice is to be given on or before the last day of the month prior to the month of the tenants vacating. ...". The landlord testified that the tenant left the rental unit in good condition but, given the fact that he had no notice, he was unable to rent immediately. The landlord testified that he has had trouble filling his rental units recently and that he has only now rented the unit for April 1, 2015. The landlord testified that he has lost rent as a result of the tenant ending her tenancy early.

The landlord testified that, despite the lack of notice and the breach of the fixed term agreement, he seeks only to retain the tenant's security deposit.

Analysis

The requirements for a landlord holding a tenant's security deposit are laid out in the *Residential Tenancy Act*. Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a

forwarding address in writing. If that does not occur and the tenant does not explicitly waive their right under section 38(6), the landlord is required to pay a monetary award pursuant to the *Act* equivalent to the value of the security deposit. This provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The landlord testified that he continues to hold the tenant's security deposit of \$450.00 plus interest from September 1, 2014 until the date of this decision. Over that period, no interest is payable on the landlord's retention of the security deposit. The landlord seeks to retain the deposit. The landlord did not repay the security deposit and did make an application for dispute resolution claiming against the security deposit. However, the landlord did not make his application within the time frame provided under the *Act*. The landlord testified that he received the tenant's forwarding address on September 30, 2014. He applied to retain the security deposit on December 16, 2014. His application was made 2 months after he was required to take action.

The landlord testified that there were no outstanding amounts owed by the tenant. The landlord testified that he received no notice at the end of this tenancy. He also provided evidence that this tenancy was scheduled for a fixed term. Finally, he testified that he has had difficulty re-renting the unit and suffered a loss in rent because the tenant ended her tenancy early. I find, based on the landlord's evidence, that the tenant ended her fixed term tenancy early contrary to the *Act*. However, since the landlord failed to apply to retain the security deposit within the timeline established under the *Act*, the landlord is unable to make a claim against that deposit.

Conclusion

Given the testimony of the landlord and the requirements for claiming security deposits under the *Act*, I find that the landlord is not entitled to retain the tenant's security deposit. I dismiss the landlord's application.

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 12, 2015

