



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of his security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although it lasted approximately 30 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlord with his application for dispute resolution hearing notice and first written evidence package on August 26, 2014 and his second written evidence package on October 10, 2014 (collectively "Application"), by way of registered mail. The tenant provided two Canada Post tracking numbers orally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's notice and first written evidence package on August 31, 2014 and second written evidence package on October 15, 2014, five days after their registered mailings.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on August 1, 2013 and ended on February 28, 2014. The tenant indicated that this tenancy was set for a fixed term of 3 years, ending on August 1, 2016. Monthly rent in the amount of \$2,200.00 was payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenant and the landlord continues to retain this deposit. The rental unit is a house.

The tenant testified that he works as a care aide. He stated that the rental unit was intended to house elderly people with good mobility. The tenant stated that he applied for a license to operate his business but was told to find residents for the rental unit first. The tenant stated that he was unable to find any residents to occupy the rental unit and that it remained empty throughout this tenancy, as the tenant did not occupy the unit either. The tenant provided a copy of the written tenancy agreement and addendum with the tenant's Application. The addendum indicates that the tenant can end the tenancy within the first 3 months, pursuant to a written letter from the local health authority indicating that the house is not suitable for community living for handicapped people.

The tenant testified that he provided the landlord with a letter, dated January 7, 2014, to end the tenancy on February 28, 2014. This written notice states that the house was rented for residential care but no residents could be found to occupy the house. The tenant stated that the landlord did not dispute this early end to the fixed term tenancy. The tenant indicated that he asked the landlord to lower the rent to \$1,500.00 for the last month of tenancy in February 2014 only, in order to account for the unoccupied rental unit and the tenant's difficult financial situation in paying rent. The tenant provided a copy of text messages between him and the landlord, confirming this information. The tenant testified that there were no unpaid rent amounts at the end of this tenancy.

The tenant stated that no move-in or move-out condition inspections or reports were completed with the landlord. The tenant indicated that he did not provide verbal or written permission to the landlord to retain any amount from his security deposit. The tenant testified that he provided the landlord with his forwarding address by way of text messages on April 7 and June 25, 2014. The tenant provided a copy of these text messages with his Application.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

Section 38 of the *Act* requires the landlord to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the 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, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, 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 (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenant seeks the return of double the value of his security deposit from the landlord, totalling \$2,200.00. The tenancy ended on February 28, 2014. The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the full security deposit to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy.

However, section 38 requires a landlord to return the deposit after the later of the end of the tenancy AND the provision of the forwarding address in writing. The tenant provided his forwarding address by way of text messages to the landlord. Text messages are not considered "written notice" for the purposes of service under section 88 of the *Act*. Accordingly, I find that the tenant's forwarding address was not proper notice under the *Act*, as it was not served in accordance with section 88.

The landlord has now been notified of the tenant's forwarding address by way of the tenant's Application for this hearing. Earlier in this decision, I found that the landlord was deemed served with the tenant's Application in accordance with the *Act*. Accordingly, the tenant's Application for the return of double the amount of his security deposit is dismissed with leave to reapply.

The landlord is put on notice that he is deemed to have received the tenant's written forwarding address five (5) days after the date of this decision (by April 5, 2015). The

landlord then has 15 days after deemed receipt (until April 20, 2015) to either return the tenant's security deposit in full or to file an application for dispute resolution. If the landlord does not complete the above actions by April 20, 2015, the tenant may apply for the return of double the amount of his security deposit in accordance with section 38 of the *Act*.

As the tenant was unsuccessful in his Application, he is not entitled to recover the \$50.00 filing fee from the landlord. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's application for the return of double the amount of his security deposit is dismissed with leave to reapply.

The tenant's application to recover the \$50.00 filing fee from the landlord is dismissed.

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 31, 2015

Residential Tenancy Branch

