Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double their security deposit. Both parties were represented at the conference call hearing.

At the hearing, the landlord's representative, WM, argued that he did not receive the full application for dispute resolution and notice of hearing. He testified that he was present when the landlord opened the registered letter sent by the tenant and the envelope contained only the first page of the application for dispute resolution and the notice of hearing. He claimed that the tenant did not send the second page of the application, on which the details of the claim are explained, nor the 29 pages of evidence which were submitted to the Residential Tenancy Branch. WM testified that he mailed back to the tenant both of the documents received together with a letter advising that he should name the corporate landlord as the respondent rather than the owner of the property. WM argued that the tenant was attempting to commit a fraud. The tenant testified that he sent the landlord both pages of the application for dispute resolution, the notice of hearing and the 29 pages of evidence which he had also sent to the Branch. He further testified that he received all of those documents back from the landlord together with the letter telling him that he had named the wrong respondent.

I prefer the evidence of the tenant over that of WM. Although WM claimed that he did not receive any of the tenant's evidence, at one point during the hearing he told me to look at the first page of the tenancy agreement which the tenant had submitted into evidence. Prior to that point, neither the tenant nor I had mentioned that the tenancy agreement had been entered into evidence. When I asked WM how he knew the tenant had submitted a copy of the tenancy agreement, he replied that they must have submitted it. I do not accept this explanation. I find it more likely than not that WM and the named respondent landlord received all of the documents submitted by the tenant. I have accepted this evidence and considered it in my deliberations.

Issue to be Decided

Are the tenants entitled to the return of double their security deposit?

Background and Evidence

The parties agreed that the tenancy began on June 4, 2014 and that a $2,500.00 security deposit was paid. The tenant claimed that the rental unit was vacated on July 31, 2014 while the landlord claimed that it was vacated on July 10, 2014. The landlord testified that at the end of July, he received the tenants' forwarding address in an email.

On September 18, 2014, the landlord filed an application for dispute resolution claiming against the security deposit. A hearing was set for March 12, 2015. The tenant did not appear at that hearing. The decision shows that the arbitrator refused to accept the landlord's evidence as it was filed just 6 days before the hearing. The landlord withdrew the claim and has since filed another claim which is scheduled to be heard on September 10, 2015. As of the date of this hearing, the tenant has not received a copy of the landlord's application for dispute resolution and notice of hearing or any evidence.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit.

Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenant paid a $2,500.00 security deposit and vacated the rental unit by July 31, 2015. According to the landlord's testimony, the landlord received the forwarding address at the end of July. Although the landlord received the address via email, which is not a recognized means of service under the Act, because the landlord acknowledged receipt of the address, I find that the address was sufficiently served for the purposes of the Act.

Based on the dates outlined above, the latest date the landlord could have filed an application for dispute resolution to avoid being liable for double the deposit was Friday, August 15. I find that the landlord filed the original application 3 days late. Further, because the landlord withdrew the application, it has the same effect as never having

been filed. I find that the landlord failed to comply with section 38(1) of the Act and is therefore liable to the tenant to pay double the security deposit. I award the tenant $5,000.00.

As the tenant has been successful in this claim, I find he should recover the filing fee paid to bring his application and I award him $50.00 for a total entitlement of $5,050.00. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for $5,050.00.

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: April 21, 2015

Residential Tenancy Branch