



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on April 2, 2015. The Landlord applied to keep the Tenant’s security and pet damage deposits (the “Deposits”).

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance by the Tenant during the 18 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents to the forwarding addresses provided by the Tenant at the end of the tenancy. This was done by registered mail on May 1, 2015. The Landlord provided a copy of the Canada Post tracking receipt as evidence to verify this method of service. The Landlord testified that although she had not served these documents within the three day time limit stipulated by Section 59(3) of the Act, the documents were not returned to her.

In relation to the service of documents for this hearing, I find that the Landlord served these to the Tenant in a period of time that allowed the Tenant four months to consider the Landlord’s Application. Therefore, I find that pursuant to Section 71(2) (b) of the Act, the documents for this hearing were sufficiently served by the Landlord for the purpose of this hearing. I find there is no evidence before me to suggest that the Tenant was disadvantaged by the timing of the service of documents for this hearing. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served with the required documents on May 6, 2015 pursuant to the Act.

Issue(s) to be Decided

Is the Landlord entitled to keep the Tenant's Deposits in full satisfaction of the Landlord's claim for unpaid/lost rent?

Background and Evidence

The Landlord testified that this month to month tenancy started on November 1, 2014. Rent under the written tenancy agreement was payable by the Tenant in the amount of \$850.00 on the first day of each month. The Tenant paid \$300.00 each for a security and pet damage deposit which the Landlord still retains.

The Landlord testified that on March 14, 2015, she received a text message from the Tenant informing her that she would be vacating the rental unit by the end of the month. The Landlord provided a copy of the text message in which the Tenant writes that she has a friend who would take over the tenancy. The Landlord testified that she spoke to the Tenant and informed her she was not comfortable renting the unit to someone who she did not know or had vetted before taking occupancy and that this would take some time. The Landlord informed the Tenant that she would still be responsible for paying April 2015 rent.

The Landlord testified that the Tenant informed her by text message that she would pay for April 2015 rent to cover the required notice period which included permission to keep her Deposits. However, the Tenant sent another text the following day informing the Landlord that she was not allowed to keep the Deposits and that she was still moving out by the end of March 2015. The Landlord testified that the Tenant vacated the rental suite on March 25, 2015 at which point the Tenant provided the Landlord with a forwarding address. The Landlord testified that she was unable to rent the unit out for April 2015 due to the short notice given by the Tenant. However, the Landlord seeks to only keep the Tenant's Deposits in full satisfaction of her April 2015 rent loss.

Analysis

I accept the undisputed evidence of the Landlord that the Tenant provided a forwarding address on March 25, 2015. The Landlord made her Application on April 2, 2015. Therefore, I find that the Landlord made the Application to keep the Tenant's security deposit within the 15 day time limit stipulated by Section 38(1) (d) of the Act. Section 45(1) of the Act explains a tenant's obligation when ending a month to month tenancy. The Act states that a tenant **must** give the Landlord a notice of at least one **full rental month** before ending the tenancy. This **must** be done in writing as required by section 52 of the Act.

In this case, I find that the Landlord did accept the Tenant's text message as notice to end the tenancy even though this was not provided in the form required by the Act. The Tenant informed the Landlord on March 14, 2015 that the tenancy was going to finish at the end of March 31, 2014. However, the Act requires that a tenancy cannot be ended in such a short period of time unless the parties mutually agreed to this date. Therefore, pursuant to Section 45(1) of the Act, the Tenant was responsible for the tenancy until the end of April 2015. However, the Tenant vacated the rental suite at the end of March 2015 and did not pay any rent for April 2015 when she was obligated to do so.

Section 45(1) of the Act is designed to give a landlord sufficient notice that enables the rental unit to be re-rented for the following month after the notice period has expired. In this case, I find that giving a written notice in the middle of March 2015 did not provide the Landlord sufficient notice for the rental suite to be rented for April 2015. Therefore, I find that the Tenant is responsible for unpaid and lost rent for April 2015 in the amount of \$850.00. However, the Landlord only seeks to retain the Tenant's Deposits in full satisfaction of her claim. Therefore, the Tenant's Application in this respect is granted.

Conclusion

The Tenant failed to end the tenancy in accordance with the Act. Therefore, the Landlord may keep the Tenant's Deposits to satisfy the Landlord's loss.

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: September 14, 2015

Residential Tenancy Branch

