



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the unit or property; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit via teleconference call. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord identified two co-tenants in filing the application. Upon hearing from both parties, I determined that the tenant's spouse was an occupant of the rental unit but did not have standing as a tenant under a tenancy agreement with the landlord. Accordingly, his name was excluded as a party to this proceeding.

I noted that I had not received any documentary or photographic evidence in support of the landlord's sizable monetary claim against the tenant. The landlord indicated that he had a considerable amount of evidence but he acknowledged that he had not served evidence upon the Residential Tenancy Branch or the tenant. The landlord explained that he thought this hearing was going to be held face-to-face and that he would bring evidence to the face-to-face hearing but that he learned just a few days ago that this matter was set for hearing via teleconference call. When I pointed out the teleconference call information was provided to the landlord when he was given the hearing packages by the Residential Tenancy Branch he responded by stating he did not receive such information. However, I confirmed with the tenant that she received a copy of the hearing package, including the Notice of Hearing, from the landlord. The tenant also stated that she was not served with any evidence from the landlord.

It was apparent to me that the landlord was unfamiliar with the dispute resolution process despite being provided information on the hearing process. Nevertheless, I dismissed the landlord's application with leave to reapply. Accordingly, the landlord

retains the right to file another application within the time limit for doing so under the Act.

Since the landlord had applied to retain the tenant's security deposit and the landlord's application has been dismissed I considered whether the security deposit should be ordered returned to the tenant in keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit?

Background and Evidence

It was undisputed that the tenant paid a security deposit of \$697.50 to the landlord and the landlord is still holding the deposit. It was undisputed that the tenant did not authorize the landlord to retain any part of the security deposit. It was also undisputed that the landlord was provided the tenant's forwarding address, in writing, on June 1, 2015. The tenant confirmed that the service address she provided is still her service address.

Analysis

Under the Act, a landlord has 15 days from the date the tenancy ended or the landlord receives the tenant's forwarding address, whichever date is later, to file a claim against a security deposit. In this case, the landlord made his application to retain the security deposit within 15 days of receiving the tenant's forwarding address but the landlord's application has been dismissed due to lack of evidence.

Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off* provides that where a landlord applies to retain the security deposit and the landlord's application is dismissed the landlord will be ordered to return the security deposit to the tenant and the tenant shall be provided a Monetary Order.

I was not provided any evidence to suggest the tenant extinguished her right to return of the security deposit and the landlord has not established an entitlement to retain the security deposit. Therefore, I find it appropriate to issue an order for the landlord to return the security deposit to the tenant as provided under Policy Guideline 17.

The landlord is ordered to return the tenant's \$697.50 security deposit to the tenant and the tenant is provided a Monetary Order for this amount to serve and enforce as necessary.

For added certainty, the landlord retains the right to file another application for damages or losses related to the tenancy within the time limit for doing so as I dismissed his claims for damage or loss with leave.

Conclusion

The landlord's application against the tenant for damage or losses was dismissed with leave to reapply

The landlord has been ordered to return the security deposit of \$697.50 to the tenant and the tenant has been provided a Monetary Order in this amount to serve and enforce.

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: November 19, 2015

Residential Tenancy Branch

