



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnsd, mndc, ff

Introduction

The tenant applies for a monetary order from the landlord, for the return of the tenant's security deposit, compensation as a result of a 2 Month Notice to End Tenancy that ended the tenancy, and the recovery of his filing fee.

Both parties attended the hearing. At the hearing the landlord advised he had filed a counter-claim to the tenant's claim with the Residential Tenancy Office (and was assigned file number 846635). Section 2.11 of the Rules of Procedure permits a respondent to make a cross-application by filing their own Application for Dispute Resolution. Section 2.12, however requires that the issues identified in the cross-application must be related to the issues identified in the application being countered or responded to. In this case, the issues are not related, as the landlord's claim is a monetary claim for damage caused by the tenant and the only possible relationship between the claims is regarding the tenant's right to recover his security deposit. Were the landlord's claim filed within 15 days of having received the tenant's forwarding address, and had the landlord satisfied all other conditions regarding a claim to retain all or part of a security deposit, I would have found that the claims to be related, but in fact none of these conditions are met. Accordingly, the claims are not related, and I find the landlord's claim to have been improperly scheduled to be heard together with the tenant's claim. The landlord remains entitled to have his claim heard, but must obtain a new hearing date for same from the Residential Tenancy Office. I have not considered the actual claim of the landlord, and am not seized of that hearing. It can be rescheduled to be heard by any arbitrator.

As an aside, I was able to obtain details of the landlord's claim by doing a file search, and from testimony of the parties, but in fact the landlord's claim was never included on my schedule of hearings, and the subject file was not provided to me.

Issue(s) to be Decided

Is the tenant entitled to compensation as a result of having been given a 2 Month Notice To End tenancy?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recovery of his filing fee?

Background and Evidence

This tenancy began August 1, 2013 and was a fixed term tenancy for one year, following which the tenancy became a month-to-month tenancy. Monthly rent was \$1,350.00, and rent was paid for each month of the tenancy. The tenant paid a security deposit of \$675.00 at the start of the tenancy. None of the deposit has been returned.

The tenant testified that there was no written condition inspection report prepared by the landlord at the start of the tenancy, or at the end of the tenancy.

The tenant was given a 2 Month Notice To End Tenancy on September 17, 2015. He vacated the premises on December 1, 2015. He received no compensation as a result of that Notice.

The tenant testified he served his new forwarding address by way of registered mail to the landlord on December 3, 2015. The landlord testified he did not receive the tenant's forwarding address until January 9, 2016, as part of the tenant's hearing package.

Analysis

In cases where a 2 Month Notice to End Tenancy has been given, section 51(1) of the Residential Tenancy Act entitles the tenant to compensation equal to one month's rent from the landlord. Since all rents have been paid, this sum is payable by the landlord to the tenant. I order that the landlord pay the sum of \$1,350.00 to the tenant.

Section 38 of the Residential Tenancy Act governs issues regarding the security deposit. Under section 38(1) of the Residential Tenancy Act, a landlord has an obligation to either file a claim to retain the tenant's deposit, or to return a tenant's security deposit, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, whichever is later. While accepting the tenant's testimony that he sent his forwarding address to the landlord on December 3, 2015 by way of registered mail, that testimony does not confirm actual receipt of the address by the landlord. I also accept the landlord's testimony that he first received the address along with the tenant's hearing package, on January 9, 2016. This refutes the deeming provisions of Section 90 of the Residential Tenancy Act as to receipt. The landlord received the tenant's claim on January 9, 2016 and made no claim of his own until March 3, 2016, which is well beyond the 15 day window. However, at the point in time the tenant filed his claim (January 7, 2016), the landlord was not yet required to return the deposit to the tenant, as he had not yet received the forward address. The tenant's claim was filed prematurely, and should have been made until at least 15 days after the tenant's new forwarding address was provided to the landlord. The claim for recovery of the deposit is therefore dismissed, with liberty to reapply. Although it is now apparent, I confirm that the forwarding address need not be provided again to the landlord, as receipt of same is now confirmed by the landlord.

The tenant seeks recovery of his \$50.00 filing fee. Given that a portion of his claim was successful, the tenant is awarded recovery of the filing fee.

Conclusion

The landlord is ordered to pay to the tenant \$1,350.00 compensation pursuant to section 51(1) of the Residential Tenancy Act, as well the filing fee of \$50.00. The total the landlord must pay to the tenant is \$1,400.00. The balance of the tenant's claim is dismissed, with liberty to reapply.

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 21, 2016

Residential Tenancy Branch