



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC

Introduction

This hearing dealt with an application by the tenant for the return of double the security deposit and for compensation that the tenant alleges is owed to him by the landlord for non-compliance with a mutual agreement. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant was represented by his advocate.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

These parties attended a hearing by conference call on September 24, 2015 to address the tenant's application for dispute resolution. During that hearing the parties came to an agreement. The tenant alleges that the landlord did not comply with the terms of the agreement and now owes him \$440.00.

The Arbitrator assisted the parties in the making of their mutual agreement which was documented in the form of a decision and order. If the tenant believes that the landlord did not comply with the terms of the settlement agreement then the tenant is at liberty to pursue other remedies under common law. Accordingly this hearing dealt only with the tenant's application for the return of double the security deposit.

Issue to be Decided

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

Background and Evidence

The tenancy began in February 2009 and ended on December 03, 2015 pursuant to the mutual agreement entered into by the parties during a hearing on September 24, 2015. Prior to moving in, the tenant had paid a deposit of \$525.00.

The tenant stated that he provided the landlord with a forwarding address on December 04, 2015. The tenant testified that on that day, he had visited the landlord's place of business and handed over the key to the receptionist. The tenant filed a copy of a note which he states that the receptionist wrote. The note states:

"Received key from Bill Dec. 4th at 4pm for suite. My new address is"

The landlord filed a statement from the receptionist stating that she wrote the first part of the note in acknowledgement of having received the key from the tenant and adds that she did not write the second sentence regarding the tenant's new address.

The tenant argued that even if the landlord did not receive the forwarding address on December 04, 2015, she did receive it at the end of January when the tenant served the landlord with the notice of hearing package. The landlord agreed that she had received the notice of hearing package in January 2016 which contained the forwarding address of the tenant. The landlord mailed a cheque for the amount of the security deposit to the tenant in July 2016 and the tenant agreed that he had received it on July 27, 2016.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the security deposit.

I now have to determine whether the landlord received the tenant's forwarding address on December 04, 2015, prior to receiving the notice of hearing package. Based on the testimony of both parties and the documents filed into evidence, I note that the handwriting on the note regarding the tenant's new address is different from the first line on the note. Both parties agreed that the receptionist wrote the note and therefore it does not make sense that the receptionist would write the tenant's forwarding address by saying "My new address is"

Based on the above, I find on a balance of probabilities that it is more likely than not that the receptionist wrote the note acknowledging receipt of the key and the latter part of the note was written later by someone other than the receptionist. Therefore I find that the tenant has failed to prove that he provided his forwarding address to the landlord on December 04, 2015.

However the landlord did receive the notice of hearing package in January and would have had the tenant's forwarding address at that time.

A forwarding address only provided by the tenant on the application for dispute resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally landlords who receive the forwarding address in the application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the deposit.

Since I have determined that the tenant had not provided the landlord with a forwarding address, prior to serving the landlord with the notice of hearing package, I find that the landlord had no way of returning the deposit by mail or making application for damages against it. The landlord is not bound by the 15 day time frame after receipt of the forwarding address contained in the notice of hearing. Therefore I find that the tenant's application was premature, because he had not carried out all of the steps he was supposed to before applying for dispute resolution, which includes providing the landlord with a forwarding address in writing. Accordingly the tenant is not entitled to the return of double the deposit.

The tenant is entitled to the return of his deposit and based on the testimony of the tenant; he has already received it on July 27, 2016.

Conclusion

The tenant's application for the return of double the deposit 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: August 12, 2016

Residential Tenancy Branch