



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated September 25, 2016.
The date on the Notice was given in error and the actual date was August 25, 2016.
- b. An order to recover the cost of the filing fee.

I ordered that the Notice to End Tenancy be amended to provide that it is dated August 25, 2016.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on August 25, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on September 7, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated August 25, 2016 as amended?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenant moved into the rental unit in January 2013. The rent was \$1050 per month. She paid a security deposit of \$525. The previous owner sold the rental property to the respondent in the spring of 2016. On March 16, 2016 the parties signed a tenancy agreement that contained the following:

- The tenancy would start on July 2, 2016.
- The rent was \$1050 per month payable in advance on the first day of the month.
- The tenant would pay a security deposit of \$525 (Current owner will transfer amount by cash or cheque) and a pet damage deposit of \$525 on July 1, 2015.

The tenant paid the pet damage deposit of \$525 as provided in the tenancy agreement. The landlord testified he has not received the security deposit from the tenant. The tenant testified the previous owner did not return the security deposit to the tenant and the receipt of the security deposit is between the previous owner and the respondent. The respondent submits this was a new tenancy and it is the tenant's responsibility to pay the security deposit..

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

Analysis:

Section 93 of the Residential Tenancy Act provides as follows:

Obligations pass with transfer or assignment of land

93 The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion.

The landlord testified this was a new tenancy agreement and the tenant was supposed to move out. This testimony is not consistent with the tenancy agreement signed by the parties which provides that the security deposit was to be transferred from the previous owner.

After carefully considering all of the evidence I determine the landlord has failed to establish sufficient proof to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- It is common in the sale of residential property where the tenant is to remain that the security deposit is transferred from the seller to the buyer. This is reflected in section 93 of the Act.

- The tenancy agreement signed by the parties also provides that the current owner was to transfer the security deposit.
- The respondent failed to prove this was not done. He failed to produce a copy of the Statement of Adjustments that would show whether this was done. The tenant does not have access to this evidence and cannot determine whether this was done in the absence of the landlord producing this type of evidence.
- The landlord failed to provide sufficient evidence to establish that the tenant or person permitted on the rental property has seriously jeopardized the health or safety or other or lawful right of another occupant or the landlord

As a result I ordered that the one month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. The tenant has been successful with this application. I ordered that the landlord pay to the tenant the sum of \$100 for the cost of the filing fee.

In my view this does not appear to be a difficult problem if the parties work together. If the security deposit was transferred as part of the sale the matter has been resolved. If the security deposit was not transferred then the tenant is in a position of giving the previous landlord written notice of her forwarding address and demanding that the security deposit be returned. The previous landlord has 15 days to do so. If he fails to do so the tenant has a right to claim double the security deposit under section 38 which is provided below.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].
- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

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: October 27, 2016

Residential Tenancy Branch