



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of the security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement. The landlords did not appear at the hearing. The tenant testified that he sent a hearing package to each landlord on August 2, 2016 at the landlords' address of residence but the mail was refused by the landlords. The tenant provided the registered mail receipts as proof of service. Section 90 of the Act deems a party to have received documents five days after mailing, even if the recipient refuses to accept or pick up their mail. In this case, the landlords are deemed to have been served with the hearing documents and I continued to hear from the tenant without the landlords present.

It is noted that the tenant and I bear the same last name. I am unaware of any connection or relationship between the tenant and I that would prevent me from conducting an unbiased hearing.

Issue(s) to be Decided

1. Is the tenant entitled to return of the security deposit?
2. Has the tenant established an entitlement to compensation for other damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The parties entered into a verbal tenancy agreement that started in October 2013. The tenant paid a security deposit of \$850.00 and was required to pay rent of \$1,700.00 on the first day of every month. The tenancy ended June 30, 2016.

The tenant seeks return of the security deposit. The tenant testified that he did not authorize the landlords to retain any part of his security deposit and the landlords still

hold the security deposit. On July 19, 2016 the tenant contacted the female landlord about the return of the security deposit via text message. The landlord indicated that the deposit would not be returned to the tenant. On July 28, 2016 the tenant contacted the male landlord via text message and provided his forwarding address. The landlord responded by proving the tenant with the landlord's service address. The tenant did not provide copies of the text messages as evidence. The tenant submitted that the landlord "knows" where the tenant lives as he moved just down the road from the rental unit and his vehicles are visible from the street.

The tenant seeks compensation of \$200.00 for window coverings and \$100.00 for a light fixture installed in the rental unit near the beginning of the tenancy. The tenant submitted that the landlord agreed to reimburse the tenant for the installation of these items but that reimbursement did not happen. The tenant acknowledged that he did not give this matter much thought throughout the tenancy and only raised it as an issue after the tenancy ended. The tenant also acknowledged that receipts for the purchase of these items had not been given to the landlords. Nor, did the tenant submit the receipts for these purchases as evidence for this proceeding.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Security Deposit

Section 38(1) of the Act provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later; unless, the landlord has a legal right under the Act to retain the security deposit. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

As seen above, a landlord has a certain amount of time to take action with respect to disposition of the security deposit. The time limit starts on the day the tenancy ends or the landlord receives the forwarding address in writing, whichever day is later. It is not enough that the landlord may have knowledge where the tenant moved to in order for the tenant to establish an entitlement to return of the security deposit. Rather, the tenant must take action to give the landlord their forwarding address in writing. Giving of a document must be done in a manner that complies with section 88 of the Act. Text

messaging and emails are not a recognized method of service under section 88 of the Act as of this time. In this case, the tenancy ended June 30, 2016; however, the tenant has not served the landlord with a forwarding address in writing in one of the ways permitted under section 88 of the Act. Therefore, I find the tenant's request for return of the security deposit was premature.

In recognition that the tenant did provide his forwarding address to the landlord on the Application for Dispute Resolution, the landlords are put on notice that the landlords are considered to be in receipt of the forwarding address upon receipt of this decision and must now deal with the security deposit pursuant to section 38 of the Act. The tenant's forwarding address is provided on the cover page of this decision for the landlords to use to refund the security deposit or serve the tenants with an Application for Dispute Resolution claiming against the security deposit.

Should the landlords fail to refund the security deposit or file an Application for Dispute Resolution seeking to retain it within 15 days of receiving this decision, the tenant is at liberty to reapply and may seek return of double the security deposit.

Compensation for window coverings and light fixture

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the tenant did not provide verification of the amount claimed to the landlords or to me. Therefore, I dismiss this portion of the claim without giving further consideration to whether there was an agreement for reimbursement or violation of a term of the tenancy agreement on part of the landlords.

Conclusion

The tenant's request for return of the security deposit was premature and dismissed with leave. The tenant's forwarding address is provided on the cover page of this decision. Upon receipt of this decision the landlords are considered to be in receipt of the tenant's forwarding address in writing and are expected to take action with respect to administering the security deposit in accordance with section 38 of the Act. Should the landlords fail to do so, the tenant may reapply and seek doubling of the security deposit.

The tenant's request for compensation for window coverings and a light fixture installed in the rental unit was dismissed without leave.

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: January 31, 2017

Residential Tenancy Branch