Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *"Act")* for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 40 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on August 18, 2016 she forwarded the tenant's application for dispute resolution hearing package via registered mail to the landlord. The tenant provided a Canada Post tracking number as proof of service. Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application on August 23, 2016, the fifth day after its registered mailing.

Preliminary Issue – Jurisdiction

Section 4 of the *Act*, precludes living accommodation occupied as vacation or travel accommodation.

Although the rental agreement provided by the tenant is entitled "vacation rental agreement," the tenant provided affirmed testimony that she had no other permanent address; she occupied the rental unit as her place of residence and she paid monthly rent. Based on the undisputed testimony of the tenant, I find this matter falls under the jurisdiction of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy initially began on December 1, 2014 on fixed term until December 31, 2014 at which time it continued on a second fixed term until January 31, 2015. Rent in the amount of $1,350.00 was payable on the first of each of these two months. The tenancy was again renewed on a fixed term from February 1, 2015 until February 28, 2015. Rent in the amount of $1,470.00 was payable on the first of the month. The tenant vacated the rental unit at the end of this fixed term, on February 28, 2015.

The tenant remitted $675.00 for the security deposit at the start of the original tenancy. The tenant testified that she has not provided the landlord with her forwarding address in writing.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. Pursuant to section 39 of the *Act*, a tenant is obligated to provide a forwarding address for the return of the deposit within a year of the end of tenancy. If this does not occur, the landlord may keep the deposit and the tenant's right to the deposit is extinguished.

Although the tenant's forwarding address is on her application for dispute resolution form, this does not meet the requirement of separate written notice. Based on the tenant's testimony, I find the tenant did not provide her forwarding address in writing within a year of the tenancy ending, to the landlord. Accordingly, I find the tenant has extinguished her right and dismiss the tenant's application without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the $100.00 filing fee paid for the application.

Conclusion

The tenant's entire application is dismissed without leave 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: February 27, 2017

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Residential Tenancy Branch