



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order and to dispute a rent increase.

The hearing was conducted via teleconference and was attended by the tenant; his witness; the landlord; and her translator.

At the outset of the hearing the tenant confirmed that he was no longer living in the rental unit or in the motel the landlord had for Dispute Resolution to exclude the matter of the rent increase.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted that the tenancy began in October 2016 on a month to month basis for the monthly rent of \$1,200.00 due on the last day of each month with a security deposit of \$500.00 paid.

The parties agreed the tenant moved out of the rental unit on December 8, 2016 due to repairs being required. The parties also agreed the landlord moved the tenant into a motel on that date and the tenant moved out of the motel on January 10, 2017.

The tenant submits that the house had a mould problem and that the landlord was aware of the problem prior to the start of the tenancy. He testified that his children were getting sick and the landlord moved him from the three bedroom house into the 1 bedroom motel room.

The landlord submitted that there was a leak in the basement and she was having it repaired. She stated that the leaking was fixed by December 15, 2016. She stated, at first, that she decided that she would also renovate the kitchen while the tenant was not

in the unit. She later clarified that because of some of the leaky the kitchen had been damaged and need replacement.

The landlord submitted that the tenant has left all of his belongings in the rental unit and had not paid any rent for the month of January 2017. The tenant confirmed that he has left most of possessions in the rental unit but that is because it is all damaged/destroyed and would not be safe for him or his family, due to mould, to move to any future location.

Analysis

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 39 of the *Act* states that if the tenant does not provide the landlord with a forwarding address in writing within 1 year after the end of the tenancy the landlord may keep the security deposit or pet damage deposit or both and the right of the tenant to the return of the deposits is extinguished.

Based on the testimony of both parties, I find the tenancy of the 3 bedroom house ended when the tenant vacated the rental unit on December 8, 2016. I also find that when the landlord moved the tenant and his family into the motel they created a new tenancy, although the terms of that tenancy are not clear from either party.

As a result, I find the landlord is required to dispense the security deposit in accordance with the requirements set forth in Sections 38 and 39 of the *Act*. Specifically, the landlord is required to return the tenant's security deposit or file an Application for Dispute Resolution seeking to claim against the deposit within 15 days of receipt of the tenant's forwarding address in writing.

Despite the fact that clearly knew where the tenant had moved to when she moved them into her motel Section 39 specifically requires the tenant to provide their forwarding address in writing and if he fails to do so within 1 year of the end of the tenancy the landlord may return the deposit.

As the tenant has provided no evidence that he had provided the landlord with his forwarding address in writing at any time since he vacated the 3 bedroom house I find that his Application for Dispute Resolution seeking return of the deposit is premature.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety with 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 01, 2017

Residential Tenancy Branch