



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 67, 72

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

The tenant attended the hearing via conference call and provided affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence in person on October 6, 2016. I accept the undisputed affirmed testimony of the tenant and find that the landlord has been properly served as per sections 88 and 89 of the Act.

During the hearing the tenant was very argumentative and would answer the arbitrator's questions with a question. It was clarified with the tenant that if the tenant did not understand the question he was to inform the arbitrator who would then attempt to rephrase the question. The tenant was informed that a question in response to a question was not helpful. The tenant was repeatedly cautioned to give an answer instead of providing another question. The landlord exited the conference call hearing before its conclusion.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided undisputed evidence that this tenancy began on April 1, 2016 and was a month-to-month tenancy in which the monthly rent was \$480.00 and a security deposit of \$240.00 was paid. The tenant provided a copy of a signed tenancy agreement in the Chinese language which was translated into English, a copy of 2 Month Notice dated August 15, 2016, a receipt for rent payment dated March 30, 2016 for April 2016, a copy of a transaction history search of the tenant's withdrawals from March 29, 2016 to August 2, 2016 and 5 photographs of the rental unit at the end of tenancy.

The tenant stated that he had complied with a 2 Month Notice to End Tenancy dated August 15, 2016 to vacate the rental premises on September 30, 2016. The tenant stated that upon vacating the rental premises the landlord refused to return his \$240.00 security deposit without permission of the tenant. The tenant provided undisputed affirmed testimony that he has not provided his forwarding address in writing to the landlord for return of the security deposit due to the landlord repeatedly ignoring his verbal requests for return of the security deposit. The tenant argued that the landlord was provided his forwarding address as part of the application for dispute.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

In this case the tenant confirmed in his direct testimony that the landlord failed to return his \$240.00 security deposit after he vacated the rental premises on September 30, 2016. The tenant also provided direct evidence that he failed to provide his forwarding address in writing to the landlord for return of the security deposit. I find that the tenant has failed as his application is premature in that the 15 days begin when the tenant has provided his forwarding address in writing for the return of the security deposit. I also find that serving the landlord with the notice of hearing package and the submitted

documentary evidence (which contains his new mailing address) does not constitute service of the forwarding address in writing to the landlord under section 38 of the Act. As such, the tenant's application is dismissed with leave to reapply when he has provided his forwarding address in writing to the landlord.

Conclusion

The tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: April 05, 2017

Residential Tenancy Branch