



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MNR, MND, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for unpaid rent, cost of cleaning, and for the recovery of the filing fee. The landlord also applied to retain the security deposit.

The landlord testified that the tenant moved out on or about May 09, 2016 without providing him with forwarding address. The landlord found out where the tenant resided from private sources. On September 15, 2017, the landlord served the tenant with the notice of hearing package by registered mail, to the address that he had acquired. The landlord stated that the package was returned to him as unclaimed.

The tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Was the tenant properly served with the notice of hearing and evidence package? Is the landlord entitled to a monetary order for unpaid rent, the cost of cleaning and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started about 12 years ago. The monthly rent was \$1,335.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$673.02. The landlord stated that he enjoyed a pleasant relationship with the tenant until he informed the tenant that he intended to sell the rental unit.

The landlord testified that the tenant held a garage sale and moved out sometime prior to May 09, 2016 without informing the landlord and without paying rent for May 2016.

The landlord stated that the tenant left a big mess outside and he incurred a cost of \$1,129.80 for the removal of the tenant's unwanted possessions.

The landlord provided a copy of the invoice. The landlord is claiming rent for May 2016 plus the cost of garbage removal for a total of \$2,464.80.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Section 39 of the *Residential Tenancy Act* states that if a tenant does not give a landlord a forwarding address in writing within one year after the end of tenancy, the landlord may keep the deposit and the right of the tenant to the return of the deposit is extinguished.

In this case, the tenancy ended in May 2016 and I accept the landlord's testimony that the tenant failed to provide the landlord with her forwarding address in writing. The landlord made this application in August 2017, which is more than one year after the tenancy ended. Accordingly I find that the tenant is not entitled to the return of the security deposit and the landlord may retain the deposit without having to apply for dispute resolution.

Section 89 (1) of the *Residential Tenancy Act* entitled "How to Give or Serve Documents".

Section 89(1) states

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The purpose of serving a notice of hearing under the Legislation is to notify the person being served of matters relating to arbitration. The tenant is entitled to have an opportunity to be heard at the hearing.

Since the tenant did not provide the landlord with a forwarding address, the landlord was forced to make his own enquiries to find out where the tenant resided. However since the notice of hearing package was sent to an address not provided by the tenant and was returned unclaimed, I am not satisfied that the notice of hearing was served in accordance with section 88 of the *Act*.

I grant the landlord leave to reapply for a monetary order for unpaid rent and the cost of garbage removal. Based on my findings the landlord need not have made application to retain the deposit because the tenant had not provided the landlord with a forwarding address for a full year after the tenancy ended. Therefore the landlord must bear the cost of filing his application.

Conclusion

The landlord may retain the security deposit. The landlord's application for a monetary order is dismissed 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: December 28, 2017

Residential Tenancy Branch