



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting payment of his security deposit following the end of his tenancy.

The Tenant appeared for the scheduled hearing, along with two advocates to represent him. The Respondent “TS” was present on behalf of the named Landlords/Respondents. I find that the notice of hearing was properly served and that evidence was submitted by all parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issue to be Decided

Is the Tenant entitled to a return of his security deposit, pursuant to section 38 of the *Residential Tenancy Act* (“Act”)?

Background and Evidence

The Tenant resided in the basement suite for approximately 8 months; his rent was \$800.00 per month. He was advised that the original landlord sold the property In August of 2017 and he was served with a Two Month Notice to End Tenancy, as it was a condition of the sale to provide vacant possession as of November 1, 2017. The Tenant was served the notice on August 30, 2017 in person, with a stated effective date of October 30, 2017. The tenant moved out as required, however, he did not receive his security deposit back, nor did he consent to

have the landlord retain the deposit. He was paid the additional one month's rent as compensation as required under section 51 the legislation.

His advocate sent a letter March 14, 2018 by registered mail to the Respondents who took possession of the property on November 1, 2017, requesting the return of the \$400.00 security deposit and providing the forwarding address of the Tenant. The letter indicated that the Tenant would be claiming double the security deposit if the money was not received within 14 days. There was no payment and the Tenant is claiming \$800.00.

The Respondent states that he is not a "landlord" and has had no dealings with the Tenant. He states he completed all the required documentation to obtain vacant possession of the property which he and his family now reside in. He argued that all paperwork was in order, he is not in possession of any security deposit and he has been unable to locate the original landlord. He has never met the Tenant and argues that he is not liable for the return of his security deposit.

Analysis

Under section 49 of the Act, a landlord may give a Two Month Notice to End a Tenancy if the property has been purchased:

- (5) A landlord may end a tenancy in respect of a rental unit if*
- (a) the landlord enters into an agreement in good faith to sell the rental unit,*
 - (b) all the conditions on which the sale depends have been satisfied, and*
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*

I find that the Notice to End Tenancy meets the section 52 requirements as to form and content. However, the original landlord ought to have provided an effective date at the end of the second month; as per section 53 of the legislation, the date to end the tenancy is automatically corrected to October 31, 2017. As the Tenant did not dispute this notice, I find that the tenancy was deemed to have ended on October 31, 2017.

I have reviewed the sales documentation and it is clear the Respondents requested vacant possession of the property and all conditions of the sale were satisfied. Although he argues that they should not be involved in this dispute, under section 58.1 of the Act, the Residential Tenancy Branch may hear a dispute filed against a purchaser of a property where there was a tenancy:

*"In this section, "**landlord**" includes a purchaser as defined in section 49 who, under section 49 (5) (c), asks a landlord to give notice to end a tenancy of a rental unit."*

Furthermore, the rights and obligations under a tenancy flow to the new owner or purchaser of the rental property pursuant to section 93 of the Act, which states:

“The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion.”

The addendum to the sales agreement stated that the Respondents required the original landlord to have the Tenant vacate the premises by 1:00 pm on November 1, 2017; the property transferred effective at noon on that same date, which means the Respondents were the owners at the time the tenancy ended. However, the *actual* notice prepared and served on the Tenant was to end the tenancy on October 30, 2017 (corrected to October 31, 2017); accordingly, I find that the property was still in the possession of the original landlord when the tenancy was terminated. There are no rights or obligations which flow to the new owners as the tenancy ended prior to the Respondents taking possession of the property.

I find the Tenant has failed to satisfy me that the Respondents are liable to return the security deposit to him. Accordingly, the Tenant's Application is dismissed with leave to re-apply. Although the tenant may have a valid claim against the original landlord with respect to this tenancy, I make no findings of fact with respect to this issue. The Tenant is still subject to the provisions of the Act, with respect to timelines to file an application against the original landlord.

Conclusion

The Tenant's Application is hereby dismissed, with leave to re-apply.

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: July 4, 2018

Residential Tenancy Branch