



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes FFT MNSD

Introduction

The matter originally proceeded by way of a hearing on June 8, 2018, pursuant to section 38 of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the tenant for the return of his security deposit.

On June 29, 2018, the landlord was granted their application for review consideration, and the Decision and Order dated June 11, 2018 were suspended until the Review Hearing scheduled for October 5, 2018. The landlord filed the application for review consideration on the grounds that he did not attend the original scheduled hearing as his named was spelled wrong in the tenant’s application and service documents, and therefore the landlord did not receive or review the application and evidence for the June 8, 2018 hearing.

Both parties attended this Review Hearing, and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord confirmed the correct spelling of his last name. As neither party was opposed, the landlord’s name was amended to reflect the proper spelling of his name.

Preliminary Issue: Landlord’s Adjournment Request

At the outset, the landlord made an application requesting an adjournment of this Review Hearing as he did not receive the tenant’s evidence package. The tenant also did not have an opportunity to review the landlord’s evidence package, but indicated that he wished to proceed.

Both parties confirmed that the landlord did not serve the tenant with the documentation for the Review Hearing in the manner and timeline ordered by the Arbitrator in the Application for Review Consideration Decision as stated below:

“Notices of the time and date of the hearing are included with this Review Consideration Decision for the Landlord to serve to the Tenant within 3 days of receipt of this Decision. The Landlord must also serve a copy of this Decision to the other party. At the new hearing, the Landlord will be required to demonstrate how the documents outlined above have been served to the other party.”

The tenant testified that the landlord had ample opportunity to prepare for this hearing, and an adjournment would be extremely prejudicial to him.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I find that the instructions in the Application for Review Application Decision were clear, and the landlord failed to establish how this adjournment request was due to issues beyond his control. I find that the landlord failed to follow the instructions given to him in the decision dated June 29, 2018, and therefore the tenant was not able to properly serve his evidentiary package on time. I find that this matter has already been delayed significantly, and any further delays would be prejudicial to the tenant. I am not satisfied that the adjournment request was not due to the intentional actions or neglect of the landlord.

The request for an adjournment was not granted. The hearing proceeded. As both parties did not have an opportunity to review each other's evidentiary evidence for this Review Hearing, the evidence of both parties were excluded for the purposes of the Review Hearing, and only the sworn, oral testimony was to be considered.

Issue(s) to be Decided

Should the Order of Possession and Order granted on June 11, 2018 be confirmed?

Background and Evidence

This month-to-month tenancy began on January 1, 2015, with monthly rent currently set at \$1,200.00. The landlord collected a security deposit in the amount of \$600.00, which he still holds. The tenant testified that he moved out on February 15, 2018, while the landlord testified that this tenancy ended on February 28, 2018. Both parties confirmed that both a move-out inspection was done, and the tenant provided his forwarding address on February 28, 2018.

The landlord testified that he kept the deposit as he felt the tenant failed to leave the rental unit in undamaged and reasonably clean condition. Both parties confirmed that the landlord did not file any applications for dispute resolution, nor did the tenant give written permission for the landlord to retain any portion of the security deposit.

Analysis

I have considered the sworn testimony of both parties in today's review hearing.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the

landlord had not obtained his written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit. As the tenant was successful at the original hearing as well as this Review Hearing, I find that the tenant is also entitled to recover the filing fee from the landlord.

I, therefore, confirm the decision and order issued June 11, 2018. The Monetary Order dated June 11, 2018 will be amended to reflect to correct spelling of the landlord's last name. This amended Monetary Order will be included with this decision.

Conclusion

The decision and order issued on June 11, 2018 are confirmed. The Monetary Order dated June 11, 2018 will be amended to reflect to correct spelling of the landlord's last name.

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: October 11, 2018

Residential Tenancy Branch