



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIVERBED ENTERPRISES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, CNR, LRE, MNDCT, MT, FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 19, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to allow access for the tenant or their guest
- a request granting more time to cancel a notice
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 5, 2018 (the "10 Day Notice");
- an order restricting or suspending the Landlords' right to enter
- a monetary order for damage or compensation
- Recovery of the filing fee.

The Tenant, Landlord and the Landlord's Agent M.G. attended the hearing, each providing a solemn affirmation at the beginning of the hearing.

The Tenant advised that he served the Landlords with the Application package in person on December 22, 2018. The Landlords confirmed receipt, however, stated that they did not receive the Tenant's documentary evidence. The Tenant acknowledged that he failed to serve his documentary evidence to the Landlords.

According to the Residential Tenancy Branch Rules of Procedure 3.14; documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing.

While the Landlords acknowledged that they did not receive the evidence from the Tenant, they were still willing to proceed with the hearing in lieu of an adjournment. For this reason, the evidence submitted to the Residential Tenancy Branch by the Tenant will not be considered in this Hearing. The Tenant was also wishing to continue to provide oral testimony in lieu of the documentary evidence.

H.G. testified the Tenant was served with the Landlord's documentary evidence via registered mail. The Tenant acknowledged receipt, however could not recall which day. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the beginning of the hearing, the parties indicated that the tenancy had ended on December 24, 2018 and that the Tenant has moved most of his possessions out of the rental unit. Therefore, the Tenant's Application to cancel the 10 Day Notice, a request for more time to cancel the notice, an order to allow access for the tenant or their guest, and an order restricting or suspending the Landlords' right to enter are now moot and are dismissed without leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss, pursuant to Section 67 of the *Act*?
2. Is the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agree that the tenancy began on November 1, 2017. Rent in the amount of \$900.00 is due to be paid to the Landlords by the first day of each month.

The Tenant paid a security deposit in the amount of \$375.00 to the Landlords. The Landlords provided a copy of the Tenancy Agreement in support.

The Landlord testified that he served the Tenant with the 10 Day Notice dated December 5, 2018 with an effective vacancy date of December 15, 2018, by posting it on the Tenant's door on December 5, 2018. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$900.00 which was due on December 1, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice. The Tenant confirmed having received the notice on December 5, 2018.

The Landlord stated that he has not received any payment towards the unpaid rent, nor did the Tenant make an Application in the appropriate timeframe, therefore assumed the tenancy would end on the effective date on the 10 Day Notice.

The Landlord testified that he witnessed the Tenant move out of his rental unit on December 24, 2018. As a result, the Landlord changed to lock to the rental unit on December 27, 2018.

The Tenant confirmed the Tenancy is over, however still wanted to return to the rental unit to collect some of his belongings left behind.

The Tenant has applied for monetary order for money owed or compensation for damage or loss. The Tenant indicated that this was in relation to him wanting his security deposit in the amount of \$375.00 returned. The Tenant stated that he has not yet provided the Landlord with his forwarding address.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Both the Landlord and the Tenant agreed that the tenancy ended on December 24, 2018 after the Tenant moved out.

The Tenant stated that he is seeking the return of his security deposit. According to Section 38(1) of the Act, within 15 days after the later of (a) the date the tenancy ends, and (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (c) repay, as provided in subsection (8), any

security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Tenant testified that he has not yet provided the Landlord with his forwarding address in writing. As a result, I find the landlord is not yet obligated to return the security deposit, pursuant to Section 38(1). I also find the Tenant's Application for monetary order for money owed or compensation for damage or loss relating to the return of his security deposit is premature and dismissed with leave to reapply.

As the Tenant was not successful with his Application the Tenant is not entitled to recover the filing fee from the Landlord.

Conclusion

The Tenant's Application for a monetary order for money owed or compensation for damage or loss 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: February 8, 2019

Residential Tenancy Branch