Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $800.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the $100.00 cost of his filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

At the outset of the hearing, I asked the Landlord to confirm the spelling of his name, as he is identified on the Application differently to how the Landlord identified himself in his submissions. The Landlord advised me of the correct spelling of his name; therefore, I have amended the Respondent's name in the Application, pursuant to section 63(3)(c) and Rule 4.2.

The Tenant said he served the Landlord with the Application for dispute resolution and the Notice of Hearing in person on May 16, 2019, to the Landlord's residence.

The Landlord said that he served his documentary evidence on the Tenant by emailing it to him; the Landlord did not have an exact date for this. However, the Tenant said that he did not receive the Landlord's evidence via email.

Section 88 of the Act sets out the ways in which documents are to be given or served on a person. Email is not specified as an appropriate means of service under the Act. The Landlord had the Tenant's mailing address from the Application, so he could have sent his evidence by regular or registered mail. I find it is more likely than not that the Tenant did not have the Landlord's evidence to review prior to the hearing, so I find it would be inconsistent with administrative fairness to consider the Landlord's evidence as before me in this hearing. I have, however, considered the Landlord's testimony in the hearing as evidence before me.

Forwarding Address

In the hearing, the Parties agreed that the tenancy ended on July 15, 2018. The Tenant said he left a written copy of his forwarding address in the rental unit mailbox on July 16, 2018. He said that he also texted the Landlord to advise him of the location of the forwarding address. The Landlord said that he did not receive either communication from the Tenant. The Parties agreed that there were other tenants at the residential property. Further, in the hearing, the Tenant said:

> I left the premises, because I wasn't getting along with other tenants. The other tenants were not listening to me, because I was no longer the landlord. I had a number of things stolen from me, so I left.

I find on a balance of probabilities that in this set of circumstances the Landlord did not receive the Tenant's forwarding address until he was served with the Tenant's Application when it was delivered in person to the Landlord's residence on May 16, 2019. I confirmed with the Tenant that the address in the Application is the Tenant's current address.

In the hearing, I suggested that the Landlord was considered served with the written forwarding address as of the date he was served with the Application, but I said I would be consulting the Act and Policy Guidelines after the hearing to confirm this matter.

I am satisfied that in the hearing, the Tenant confirmed that his address on his Application is his current address for service. I notified the Parties that the Landlord had

now been served with the Tenant's address; however, it is not the date of the Application, but the date of the hearing - August 27, 2019 - that the Landlord is deemed served with the forwarding address. Accordingly, I find that the Tenant's Application was premature, as he had not provided the Landlord with his forwarding address yet. I, therefore, dismiss the Tenant's Application with leave to reapply.

However, it has been over a year since the tenancy ended, and section 39 of the Act states:

> **39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
>
> (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
>
> (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Section 66 of the Act authorizes me to extend a time limit established by the Act in exceptional circumstances. PD15-01 explains exceptional circumstances to include:

> **Exceptional Circumstances**
>
> In some instances, the one year time period set out in s. 39 of the Act might be elapsing and may preclude the Tenant from applying again. The Arbitrator has the discretion to extend the time to re-apply pursuant to s. 66 of the Act. The Arbitrator may also find that the Tenant failed to follow s. 39 of the Act and is precluded from applying again due to their premature Application and the statutory time limit of one year to provide the forwarding address in writing to the Landlord.

In the situation before me, I find it reasonable to use my discretion pursuant to section 66 of the Act to allow the Parties additional time to comply with the Act. The Landlord has 15 days from the August 27, 2019 receipt of the Tenant's address in writing to (a) return the Tenant's $400.00 security deposit, or (b) apply for dispute resolution at the RTB and claim against the security deposit, pursuant to section 38(1) of the Act. As the Tenant's written forwarding address was deemed received by the Landlord on August 27, 2019, the Landlord has **until 4:00 p.m. September 11, 2019** to comply with section 38(1) of the Act in this regard.

Further, I use my discretion pursuant to section 66 of the Act to grant the Tenant **until**

4:00 p.m. September 20, 2019, to re-apply for dispute resolution, if the Landlord has not complied with section 38(1) of the Act by 4:00 p.m. on September 11, 2019.

Conclusion

I found that the Tenant failed to provide the Landlord with his forwarding address in writing at the end of the tenancy, until the Tenant applied for dispute resolution seeking recovery of double the security deposit. As such, the Tenant was premature in applying for recovery of the security deposit. I have dismissed the Tenant's Application with leave to reapply.

The Tenant is past the time limit in which he may apply for recovery of his security deposit from the Landlord, pursuant to section 39 of the Act. However, I have used my discretion under section 66 of the Act to extend time limits established by sections 38 and 39 of the Act. I grant the Landlord until **September 11, 2019 at 4:00 p.m**. to comply with section 38(1) of the Act. I grant the Tenant until **September 20, 2019 at 4:00 p.m**.to reapply for dispute resolution for recovery of his security deposit, if the Landlord has not complied with section 38(1) of the Act by September 11, 2019.

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: August 29, 2019

Residential Tenancy Branch