



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$1399 for double the security deposit.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on July 5, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issue to be decided is whether the tenant is entitled to the return of double the security deposit/pet deposit?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2014. The rent was \$1360 per month payable in advance on first day of each month. The tenancy at the end of the tenancy was \$1399 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$680 at the start of the tenancy.

The tenant failed to pay the rent for July 2017. On July 5, 2017 the landlord served a 10 day Notice to End Tenancy on the tenant that set the end of tenancy date for July 17, 2017.

The tenant did not file an Application for Dispute Resolution disputing this Notice.

On July 26, 2017 the landlord filed an Application for Dispute Resolution seeking an Order of Possession, a monetary order for non payment of rent and an order to retain the security deposit etc..

The tenant vacated the rental unit on July 27, 2017. The tenant did not give her a forwarding address when he vacated.

During the last few days of July the landlord text messaged the tenant several times trying to arrange for an inspection for August 1, 2017 but the tenant failed to respond. She also attempted to contact him by telephone but the tenant failed to return her phone calls. On August 1, 2017 the landlord conducted a condition inspection in the absence of the Tenant..

The landlord's application was set for hearing on October 3, 2017. The landlord failed to attend. The tenant was present. The arbitrator dismissed the landlord's application without leave to re-apply.

The tenant testified that on July 24, 2018 he personally delivered to the landlord a notice in writing that gave his forwarding address in writing. The landlord testified she was uncertain when she received that Notice. She acknowledged that it was received in the package she received from the Tenant as part of this hearing.

The tenant filed the within Application for Dispute Resolution on July 5, 2019. He testified her personally served the landlord with the Application for Dispute Resolution on that date.

The landlord testified the tenant caused significant damage to the property. The cost of garbage removal and repair was \$1850. The tenant acknowledged responsibility for some of the mess. However, he testified that much of the garbage that was left belonged to other tenants. Further, the landlord failed to give him sufficient time to clean the rental property. The landlord further testified the tenant failed to pay the rent for July and \$1399 is owed.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless

- The tenant's right to the security deposit has been extinguished.
- the parties have agreed in writing that the landlord can retain the security deposit
- the landlord already has a monetary order against the tenants or
- the landlord files an Application for Dispute Resolution within that 15 day period.

It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis:

After carefully considering all of the evidence I determined the Tenant's application for double the security deposit should be dismissed for the following reasons:

- The tenant vacated the rental unit and failed to provide the landlord with his forwarding address in writing. The landlord attempted to contact him by telephone and by text message to arrange for a Final Inspection on August 1, 2017. The tenant failed to attend. I determined the tenant's right to claim for double the security deposit was extinguished as the tenant failed to participate in the final inspection despite being requested to do so on several occasions by the landlord. Section 38(2) of the Act provides as follows:
 - 38(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].
- Further, I determined the Tenant failed to provide the landlord with his forwarding address in writing within one year of the end of tenancy as required by section 39

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.

The tenant submits the tenancy ended on July 27, 2017 when he vacated the rental unit. He testified he gave the landlord notice in writing of his forwarding address on July 24, 2018. The landlord could not remember when she received it. I accept the tenant's testimony on this point.

However section 46(4) and (5) provides as follows:

Landlord's notice: non-payment of rent

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) **is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice (my emphasis), and**

(b) must vacate the rental unit to which the notice relates by that date.

The parties agree a 10 day Notice to End Tenancy was served on the Tenant on July 5, 2017. The Notice set the end of tenancy for July 17, 2017. I determined the tenancy ended on the effective date of the Notice to End Tenancy and as a result the tenant failed to provide the landlord with his forwarding address in writing within one year as required by section 39 of the Residential Tenancy Act.

- The tenant acknowledged that he failed to pay the rent for July 2017 and he lived in the rental property for most of that month. Further, he acknowledged responsibility for some but not all of the garbage to the rental property.

Conclusion:

In conclusion I ordered the application of the Tenant for double the security deposit be dismissed as his claim has been extinguished.

This decision is final and binding on both parties.

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 10, 2019

Residential Tenancy Branch