



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDS, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$687.50 for the return of the security deposit.
- b. An order to recover the cost of the filing fee.

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 Dispute Resolution Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on July 24, 2019. A search of the Canada Post Tracking services indicates it was accepted on August 9, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 3, 2018 and continue on a month to month basis. The rent was \$1375. The tenant(s) paid a security deposit of \$716 on November 3, 2018.

The tenancy ended on June 30, 2019.

The tenant(s) provided the landlord with his/her their forwarding address in writing on July 5, 2019.

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 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

The landlord testified he was never served with the tenant's forwarding address in writing. The tenant provided evidence that he sent a text message to the landlord demanding the return of the security deposit, providing his forwarding address and providing the landlord with information published by the Residential Tenancy Branch on the return of the security deposit.

Section 88 of the Act does not recognize the use of text messages as a sufficient form of service. However, section 71(2) of the Act provides as follows:

Director's orders: delivery and service of documents

71 (2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

The landlord was provided the tenant's forwarding address on July 5, 2019. It was apparent by other text messages and the text message in question that the tenant was demanding the return of the security deposit. I determined the tenant's forwarding address was sufficiently served for the purposes on this Act on July 5, 2019.

The landlord submits the tenant failed to make himself available to conduct a Condition Inspection at the end of the tenancy. The tenant produced a text from the landlord dated June 29, 2019 stating he would be drinking vodka with friends that evening. The tenant interpreted that to mean that the landlord was not able to conduct a Condition Inspection on that date. The tenant returned in the afternoon of June 30, 2019 and saw the landlord making repairs. The tenant testified the landlord told him it was not necessary for the tenant to do cleaning as repairs unrelated to the tenant's tenancy would first have to be carried out. The tenant further testified the landlord did not post a Notice of Inspection on the door to the rental property. The landlord submits it was too late at that time to conduct the Condition Inspection as the tenancy had come to an end at 1:00 p.m.

I determined the tenant's right to claim the security deposit was not extinguished by the failure to participate in a Condition Inspection for the following reasons:

- The landlord was not prepared to conduct the Condition Inspection on June 29, 2019 which was the first date that was proposed.
- The Act provides it is the duty of the landlord to ensure the Condition Inspection is completed. There is no reason why the Condition Inspection could not have been conducted on the day the tenant return to pick up his belongings even though it was after 1:00 p.m.
- The landlord failed to prove that he posted a Notice(s) of Inspection as alleged. The first Notice states the Condition Inspection was to be conducted on June 29, 2019 yet the landlord was not available as evidenced by his text message.

In summary I determined the tenant paid a security deposit of \$716 on November 3, 2018. I determined the tenancy ended on June 30, 2019. I further determined the tenant provided the landlord with his forwarding address in writing on July 5, 2019. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The tenant's right to claim the security deposit was not extinguished. As a result I

determined the tenants have established a claim against the landlord for double the security deposit of the sum of \$1432 ($\$716 \times 2 = \1432)..

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1432 plus the sum of \$100 in respect of the filing fee for a total of \$1532.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The tenant was prepared to waive his claim for the doubling on the condition that the parties agree to release each other from all further claims. The landlord did not agree. The landlord retains the right to file a claim against the tenant for alleged damage and the failure to clean and that matter can be dealt with in due course. The tenant did not agree to waive his claim for the doubling of the security deposit in the absence of both parties releasing each other from all further claims.

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 31, 2019

Residential Tenancy Branch