



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was conducted based on the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$4,500.00 for the return of double their security deposit, plus the return of the filing fee.

The tenant JW (tenant) attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing. The hearing process was explained to the tenant including expectations regarding conduct during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated October 23, 2019 (Notice of Hearing), application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing was served on the landlord by registered mail on October 26, 2019 and provided a registered mail tracking number, which I have included on the cover page of this decision and identified as 1 for ease of reference.

The tenant provided a registered mail receipt in evidence and confirmed that the name and address matched the name of the landlord and the service address of the landlord on the tenancy agreement. The tenancy agreement was also submitted in evidence. Documents sent by registered mail are deemed served five days after mailing under section 90 of the Act. The tenant stated that the registered mail was returned as "unclaimed", which is supported by the registered mail tracking information. Given the above, I find the landlord was sufficiently served on the fifth day after mailing, in accordance with the Act. As a result, the hearing continued without the landlord present.

The tenant testified that a previous application for the same issues before me was dismissed with leave to reapply as the landlord failed to attend the previous hearing,

having incorrectly assumed that the Residential Tenancy Branch (RTB) would contact the landlord at the time of the hearing, which is contrary to the written instructions on the Notice of Hearing.

Preliminary and Procedural Matters

The tenant confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant did not have an email address for the landlord, the decision will be sent by regular mail to the landlord.

In addition to the above, the tenant was advised on three separate occasions during the hearing to cease interrupting the undersigned arbitrator, which I will address further below.

Issues to be Decided

- Is the tenant entitled to the return of double their security deposit pursuant to section 38 of the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee?

Background and Evidence

A fixed-term tenancy began on December 10, 2018 and was scheduled to revert to a month to month tenancy after May 31, 2019; however, the tenant stated that they returned the keys to the rental unit and vacated the rental unit on June 1, 2019. Monthly rent in the amount of \$4,400.00 was due on the first day of each month. A security deposit of \$2,200.00 was paid by the tenant at the start of the tenancy.

The tenant testified that they provided their written forwarding address to the landlord on June 13, 2019 via registered mail; however, failed to submit a copy of the registered mail receipt. The tenant provided a copy of a written forwarding address that was not dated or signed and had a name that was different than the tenant's name on the application before me, and the name of the tenant on the tenancy agreement. The tenant testified that he had received a legal name change; however, failed to include any supporting documentary evidence and did not mention that fact in their application or in their documentary evidence. In addition, the tenant was unable to provide any documentary evidence to support that the landlord was advised in writing during their

tenancy of their new legal name, which was different from the name of the tenant listed on the tenancy agreement.

It was at this point of the hearing, that the tenant stated, "I am from Taiwan and I'm loaded man, so I don't care." This was also after two formal cautions to the tenant to cease interrupting the arbitrator when I was speaking. The tenant was then advised that their behaviour was unacceptable and that their application was being dismissed without leave to reapply due to insufficient evidence. The tenant was also advised that they failed to heed several cautions during the hearing to cease interrupting the undersigned arbitrator.

Analysis

Based on the above and the evidence provided, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was possible to minimize the damage or losses that were incurred.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), **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.

[My emphasis added]

Based on the evidence before me, I am not satisfied that the written forwarding address provided by the tenant included the name of the tenant that matched the tenant's name on the tenancy agreement and as a result, contained insufficient information to prompt the landlord to return the tenant's security deposit. I also find that it is not reasonable for the landlord to have returned a security deposit to a name that does not match the name the tenant's name on the tenancy agreement. Therefore, I find the tenant has failed to meet the burden of proof for all four parts of the test for damages or loss.

As this is now the tenant's second application for the same issues, I do not grant the tenant leave to apply for a third time. I dismiss the tenant's application due to insufficient evidence, without leave to reapply, due to insufficient evidence that they served a written forwarding address with a name that matched the name of the tenant as listed on the tenancy agreement or at the very least, included a copy of their legal name change documents.

As the tenant's application has been dismissed without leave to reapply, I do not grant the recovery of the filing fee.

Conclusion

The tenant's application is dismissed in full due to insufficient evidence, without leave to reapply.

The filing fee is not granted.

This decision will be emailed to the tenant and sent by regular mail to the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 12, 2020

Residential Tenancy Branch