



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act*, for the return of the security deposit and for the recovery of the filing fee.

The landlord did not appear for the hearing. I accept the evidence of the tenant that the landlord was served with notice of this application and hearing by registered mail on April 25, 2020. Pursuant to section 90(a) of the *Act* I deem the landlord as having been served the documents on the fifth day after they were mailed or on April 30, 2020. I proceeded with the hearing in the landlord's absence.

The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the tenant entitled to a monetary order for the return of the security deposit and the filing fee?

Background and Evidence

The tenant testified that he entered into a tenancy agreement on March 12, 2020 and on that day, he paid a security deposit of \$450.00. The monthly rent was \$900.00 due on the first day of each month. On March 13, 2020 the tenant informed the landlord that he would not be moving in.

On March 19, 2020 the tenant provided the landlord with a forwarding address by registered mail. The tenant filed proof of service.

The tenant testified that by April 23, 2020, he had not heard back from the landlord and had not received the return of the deposit. The tenant made this application on April 23, 2020.

Analysis

Based on the oral testimony of the tenant and the documentary evidence filed by the tenant, I make the following findings. I find that the tenant entered into a tenancy agreement on March 12, 2020 for a tenancy that was due to start in the third week of March 2020. Rent was \$900.00 due on the first of each month. On March 13, 2020 the tenant gave the landlord notice to end the tenancy immediately and informed the landlord that he would not be moving in.

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Since the tenancy agreement was entered into on March 12, 2020, the obligations of both parties start from this date. The tenant's obligations include paying rent on the first of each month and providing at least 30 days notice to end the tenancy. This notice must be given prior to the first of the month.

Based on all the documentary evidence and the oral testimony of the tenant, I find that by providing notice on March 12, 2020, to end the tenancy immediately, the earliest the tenant could legally end the tenancy would be April 30, 2020.

Section 38(1) of the *Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the evidence by the tenant I find that the tenant provided his address to the landlord on March 19, 2020 and the tenancy ended on April 30, 2020. The tenant also made this application on April 23, 2020 which is prior to the end date of the tenancy. Pursuant to s. 38 of the *Residential Tenancy Act*, the landlord had up to May 15, 2020 to return the deposit or make application to retain it.

Since the matter was in dispute the landlord was not obliged to return the deposit prior to the hearing.

However, after this hearing, the landlord is now on notice that they have 15 days from the date they receive this decision, to return the deposit or make application to retain all or part of the deposit.

The tenant's application is premature and is therefore dismissed with leave to reapply. The tenant has not proven his claim for the return of the deposit and must therefore bear the cost of filing this application.

Conclusion

I dismiss the tenant's application 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: May 19, 2020

Residential Tenancy Branch