Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for an order for the landlord to return the security deposit (the deposit), pursuant to section 38.

Both parties attended the hearing. The landlord was assisted by advocate SG. Witness for the tenant RD also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue to be Decided

Is the tenant entitled to an order for the return of the deposit?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant’s claim and my findings are set out below. I explained

rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy ended on July 31, 2020. Monthly rent was $1,300.00, due on the first day of the month. At the outset of the tenancy a deposit of $650.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenant affirmed he did not authorize the landlord to retain the deposit.

The interim decision states:

> I find the tenant has not submitted a copy of a Proof of Service of the Forwarding Address form or any other document containing the signature of a witness, or of the person who received the forwarding address, to confirm service of the forwarding address to the landlord.
> I also note that in their Application for Dispute Resolution by Direct Request, the tenant has indicated the forwarding address was personally served to the landlord on July 20, 2020. However, the copy of the forwarding address submitted by the tenant is dated July 22, 2021.
> I find I am not able to confirm service of the forwarding address to the landlord, which is a requirement of the Direct Request Proceeding, and that a hearing is necessary to address this issue.

The tenant affirmed he served the landlord his forwarding address in writing in person. The tenant does not remember when he served the forwarding address. Later the tenant affirmed he served the forwarding address the day after the prior dispute resolution hearing between the parties, one month prior to the end of the tenancy or on June 29 or 30, 2020.

The tenant’s witness affirmed the forwarding address was served “sometime at the end of June”, or one month before the tenancy ended.

The landlord affirmed she did not receive the tenant’s forwarding address. The landlord learned the tenant’s forwarding address when she received the registered mail package on August 12, 2021 containing the notice of hearing for this application. The landlord assumed the tenant’s forwarding address is the return address of the registered mail package sent by the tenant.

Analysis

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

> (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.

I find the testimony offered by the tenant and the witness was vague and not convincing. The tenant and the witness did not indicate when they served the forwarding address in writing. The landlord's testimony was convincing. Thus, I find the tenant failed to prove, on a balance of probabilities, that he served the forwarding address.

Section 39 of the Act provides:

> 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.

Residential Tenancy Branch Policy Guideline 17 provides:

> If a tenant does not give the landlord a forwarding address within one year after the end of the tenancy, the landlord may keep the pet damage deposit.

The landlord confirmed receipt of the forwarding address on August 12, 2021. The tenancy ended on July 30, 2020.

Thus, as the tenant failed to prove that he served the forwarding address within one year after the end of the tenancy, I dismiss the tenant's application.

Conclusion

I dismiss the tenant's application without 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: February 28, 2022

Residential Tenancy Branch