Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application by the tenant for the return of double the security deposit. Both parties were represented in the conference call hearing.

At the outset of the hearing, the tenant's agent advised that the tenant had not received a copy of the landlord's application for dispute resolution. The landlord presented evidence showing that the application had been sent to the tenant via registered mail to the forwarding address provided by the tenant and was returned by Canada Post as unclaimed.

I described the landlord's application and evidence to the tenant's agent in detail and asked her if she wished to adjourn the matter to permit the tenant an opportunity to respond to the landlord's claim. The agent stated that she wished to proceed and the hearing proceeded to address both applications.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The only fact that the parties agreed upon was that the tenant paid a $300.00 security deposit on September 4, 2010.

The landlord testified that the tenant viewed the rental unit while it was occupied by another tenant and agreed to rent the unit. The landlord promised to shampoo the carpet prior to the beginning of the tenancy. The landlord maintained that the tenancy was to begin on September 1, although the tenant may not be moving in until some time

later. He further testified that at some point after the security deposit was paid, the tenant's wife and daughter attended at the rental unit to advise that the tenant would not be moving into the unit and that they requested the security deposit back at that time, which he refused to give. The landlord testified that he received the tenant's forwarding address by registered mail at some point in November, although he could not recall the exact date.

The tenant's agent testified that the tenant viewed the suite once before paying the security deposit, went back to view it again a second time and found that the suite was in poor condition and that the landlord promised to clean and repair some of the more urgent problems in the suite, including tears in the carpet and a hole in the linoleum. When the tenant returned on September 8, he was advised by the landlord that the landlord would not be performing the promised repairs. At that time the tenant advised that he would not be moving into the rental unit.

The tenant's agent testified that she sent the landlord a forwarding address by regular mail in September and October and on November 9 sent him the forwarding address by registered mail.

Analysis

The landlord is obligated to prepare a written tenancy agreement and in this case failed to do so. In the absence of such an agreement, which would have confirmed the date on which the tenancy was to start, I find that the tenancy was to start on September 15. This is consistent with the security deposit having been paid on September 4.

I find insufficient evidence to show that the landlord was served with the forwarding address by regular mail. Section 90 of the Act provides that documents which are served via registered mail are deemed received on the 5th day after mailing. I find that the landlord received the forwarding address on November 15. The landlord made his application for dispute resolution to retain the security deposit on November 26. I find that the landlord made his application within 15 days of the time he received the forwarding address. Section 38 of the Act provides that a tenant may claim double the security deposit only when the landlord fails to act within 15 days. As the landlord complied with the Act in this regard, I dismiss the tenant's claim for double the security deposit.

The Act provides that the only circumstances in which tenants are not required to give 30 days notice are when the landlord has breached a material term of the tenancy. In that event, the tenant is required to give the landlord a letter advising that he has breached a material term, giving him a reasonable opportunity to rectify the breach and

only upon the landlord's failure to rectify the breach, to end the tenancy immediately. I find that the tenant failed to follow the procedure outlined by the Act.

As the tenant did not end the tenancy properly, I find that the landlord suffered a loss of income from September 15 – 30 and I find that the landlord is entitled to recover $300.00.

I order that the landlord retain the $300.00 security deposit in full satisfaction of his claim.

The parties shall each bear their own filing fees.

Conclusion

The tenant's claim is dismissed and the landlord may retain the security deposit.

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: April 07, 2011

Residential Tenancy Branch