Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for double the return of his security deposit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord's head office.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of double his security deposit?

Background and Evidence

The Tenant testified he viewed the rental unit in mid March 2010. On March 26, 2010 he paid the security deposit of $375.00 and entered into a verbal agreement with the Landlord that he would take the rental unit April 1, 2010 if he secured employment. When he did not get the job he called the Landlord and left a message on her machine to advise he was not moving in.

The Tenant stated that he did not request the return of his security deposit in his first voice mail message as he left town right away for several months. He advised he could not remember what date he left this first message. He recalls sending the Landlord a letter sometime in April 2010 with his forwarding address and to request his security deposit and that he also left a voice mail message at this time with the same information.

The Landlord testified and confirmed the Tenant viewed the suite in mid March 2010 and agreed to take the unit March 26, 2010 when he paid the security deposit. She did

not enter into a “conditional” verbal tenancy agreement. What was agreed to was the Tenant would rent the unit as of April 1, 2010 and would sign the tenancy agreement and get the keys on that date. She manages the property and needs to have tenants so would never agree to hold a rental unit on “maybe” or the off chance the person will get a job. The Tenant did not show up on April 1, 2010 and failed to contact her until April 9, 2010 when she received his voice message stating he was not going to take the unit.

The Landlord advised she never heard from the Tenant again and did not receive anything from the Tenant in writing until she received his application for dispute resolution on April 4, 2011. In closing the Landlord stated the Tenant failed to contact her until mid April 2010 which caused her to lose one month’s rent for the suite.

The Tenant responded stating that it is obvious the Landlord received his voice mail as she confirmed that in her testimony. He paid her the security deposit as evidence of good faith that he would take the apartment if he got the job.

Analysis

I favor the evidence of the Landlord, who stated the Tenant had agreed to rent the unit as of April 1, 2010 and he paid the security deposit to hold the unit until he returned to pick up the keys and sign the tenancy agreement. I prefer the Landlord’s evidence over the Tenant’s evidence that he paid the security deposit as a good faith gesture just in case he secured a job.

I favored the evidence of the Landlord over the Tenant, in part, because the Landlord’s evidence was forthright and credible. The Landlord acknowledged receiving the Tenant’s voicemail and confirmed she made no effort to return the security deposit or make an application for dispute resolution to be able to keep the deposit. In my view the Landlord’s willingness to admit receiving the message when she could easily have stated she did receive the Tenant’s telephone message lends credibility to all of her evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the*

> *probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenant's explanation of why he did not follow through with the tenancy agreement and make an effort to collect his security deposit earlier to be improbable. Given that the Tenant failed to take occupancy of the rental unit or provide the Landlord with proper notice to end the tenancy it is reasonable to conclude that after he left the voice message for the Landlord April 9, 2010, he simply left town and made no further contact with the Landlord until he made his application for dispute resolution.

I find that the Tenant's explanation that he provided the Landlord with his forwarding address, in writing, in April 2010, to be improbable. Rather, I find the Landlord's explanation that the Tenant left a voice message on April 9, 2010 with no written communication until the Tenant served his application for dispute resolution to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find the Landlord did not receive the Tenant's forwarding address in writing prior to making his application for dispute resolution. Therefore, the tenant has not met the burden of proving he gave the Landlord his forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

Therefore in the absence of sufficient proof that a forwarding address in writing was given to the Landlord, it is my finding that, at the time that the Tenant applied for dispute resolution, the Landlord was under no obligation to return the security deposit and therefore this application is premature. I therefore dismiss this claim with leave to re-apply.

At the hearing the tenant stated that the address on the application for dispute resolution is his current forwarding address; therefore the Landlord is now considered to have received the forwarding address in writing as of today, July 21, 2011. The Landlord is now required to manage the security deposit in accordance with section 38 of the Act which provides as follows:

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Conclusion

I HEREBY 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: July 21, 2011.

Residential Tenancy Branch