



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF, O

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, to recover the fee for filing this Application for Dispute Resolution, and “other”.

The Tenant and the Respondent agree that the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondent, via registered mail, on March 20, 2014. The Respondent stated that he was no longer representing the Landlord when he received these documents and he asked that the Application for Dispute Resolution be dismissed, as it names the incorrect party.

Issue(s) to be Decided

Has the Landlord been properly served with this Application for Dispute Resolution and, if so, is the Tenant entitled to the return of security deposit?

Background and Evidence

The Respondent stated that he was no longer representing the Landlord when he received these documents and he asked that the Application for Dispute Resolution be dismissed, as it names the incorrect party.

The Tenant and the Respondent agree that the Tenant entered into a written tenancy agreement with the Landlord and that the Respondent represented the Landlord during this tenancy. The address for the Landlord that is listed on the tenancy agreement is the Respondent’s business address.

The Respondent stated that he stopped acting as an agent for the Landlord when this tenancy ended on February 28, 2014 and that when the tenancy ended he informed the Tenant that he no longer represented the Landlord. The Tenant stated that he had not previously been advised that the Respondent was no longer representing the Landlord.

The Respondent stated that when he received the Application for Dispute Resolution he advised that Landlord it had been received and she told him that she would not be attending the hearing, as she had not been named on the Application for Dispute Resolution. He stated that he did not forward the hearing documents to the Landlord as he was no longer working for her.

The Tenant argued that the Respondent continued to act as an agent for the Landlord after the tenancy ended as he communicated with him by email regarding a variety of issues and he returned the security deposit to him, by mail, on April 03, 2014.

The Tenant applied to amend the Application for Dispute Resolution to include the name of the Landlord who is named on the tenancy agreement. The Respondent opposed the amendment, as he has not been authorized to represent the Landlord in these proceedings and because the Landlord may have elected to attend the hearing if she had been named on the Application for Dispute Resolution.

Analysis

On the basis of the undisputed evidence, I find that the Respondent is not the Landlord in this matter, although he acted as an agent for the Landlord during the tenancy. Although an agent has the right to represent a landlord in regards to the tenancy, an agent (or employee) of a landlord is not liable for the financial obligations of his/her employer. I therefore dismiss the Tenant's application for a monetary Order naming the Respondent.

Residential Tenancy Branch policy guidelines suggest that I may add a Respondent to the Application for Dispute Resolution, as long as that party consents to being added to the Application. I concur with this guideline. I find that, in these circumstances, it would be unfair to the Landlord to amend this Application for Dispute Resolution as the Landlord has not specifically consented to the amendment.

In determining that an amendment is not appropriate, I was influenced by the Respondent's testimony, who stated that the Landlord told him she did not attend the hearing because she had not been named in the Application for Dispute Resolution. In my view, this is a clear indication that the Landlord believed she was not a party to this dispute.

In determining that an amendment is not appropriate, I was also influenced by the Respondent's testimony that he did not have authority to act on behalf of the Landlord at these proceedings. As the Landlord was not served with the hearing documents and she was not represented at these proceedings, I find the amendment would be unfair to the Landlord.

For all of the aforementioned reasons, the application to amend the Application for Dispute Resolution is dismissed.

The Tenant has failed to establish the merits of the Application for Dispute Resolution and I therefore dismiss his application to recover the fee for filing the Application.

Conclusion

The Tenant retains the right to file an Application for Dispute Resolution in regards to this matter, in which he names the Landlord as the Respondent.

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 03, 2014

Residential Tenancy Branch

