Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, MNR, FF

Introduction

By hearing letter issued June 3, 2014, under file 822219 the tenant applies to recover an $850.00 security deposit doubled to $1700.00 pursuant to s. 38 of the *Residential Tenancy Act* (the "*Act*").

The landlord applied in mid May 2014 under file # for a claim against the security deposit, but that application was "abandoned" according to the Residential Tenancy Branch ("RTB") records. The landlord was uncertain why it was abandoned and indicated that perhaps she'd served the tenant only with her evidence and not the notice of hearing or application itself.

By an application filed September 4, 2014 under file #, the landlord applies again. That application is for a monetary award for rent and compensation for damage to the premises and to keep the deposit against her expected award.

At this hearing the landlord reported that the hearing date for her application is March 30, 2015. The tenant did not correct her. Given that evidence and the assumption that the tenant had been served with a notice of hearing for March 30, 2015, the landlord's claims under file were not dealt with at this hearing.

After the hearing it came to my attention that a notice of hearing letter was on file showing that the landlord's application, file was scheduled to be heard today, with the tenant's application. It is not apparent whether that hearing letter had been served on the tenant.

In light of this development, I suggest that the landlord contact the RTB, bring this decision to its attention and request it to schedule a new hearing date and issue a new "notice of a dispute resolution hearing" letter under the same file number, to be served

on the tenant along with another any other material he has not yet received for that application, file #.

If the RTB cannot reschedule the matter and issue a new hearing letter, then I grant the landlord leave to re-apply and would express my hope that the RTB would waive any filing fee.

Issue(s) to be Decided

The issue raised by the tenant's application is whether or not he is entitled to recover his security deposit and, if so, is he entitled to double the deposit amount pursuant to s. 38.

Background and Evidence

The rental unit is the three bedroom main floor of a house. The house also contains a basement suite rented to others. The tenancy started in May 2008. The rent was $1700.00 per month due on the first of each month and the landlord holds an $850.00 security deposit.

On April 5, 2014, the landlord served the tenant with a one month Notice to End Tenancy, alleging he had sublet the premises without authorization. The effective given in the Notice was May 5, 2014. The tenant did not dispute the Notice. He agrees the tenancy ended May 5, 2014. He vacated the premises by May 1, 2014. It is not disputed that the tenant provided his forwarding address in writing to the landlord before leaving.

The landlord does not have the tenant's written authorization to keep any portion of the deposit, nor has she obtained any monetary award against the tenant (yet).

Analysis

It is clear that the tenant is entitled to recover his $850.00 security deposit. The landlord does not have permission or lawful authority to keep it.

But, is the tenant entitled to a doubling of that deposit?

The relevant portions of s.38 of the Act, read:

38 (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.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that
(a) the director has previously ordered the tenant to pay to the landlord, and
(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The question is whether or not the landlord did, within proscribed fifteen days after May 5, 2014, "make an application" within the meaning of s. 38 (1)(d), above.

The records of the RTB show that on May 16, 2014 the landlord tendered an application to keep the security deposit. That application was "created," in the words of the data entry employees at the RTB, on May 20th and I understand that would be when the hearing package would be available for the landlord to retrieve and serve. On May 29th the Service BC office in Duncan, B.C. reported to the RTB that the documents it had at its office had not been picked up by the landlord. The RTB record indicates that it was determined that the landlord was out of time for service of the documents and so the RTB was "SETTING FILE TO ABANDONED."

The Act does not indicate at what particular moment an application for dispute resolution brought by a landlord or tenant has been "made." There are many references to the phrase "make an application" but none describe at what stage and application for dispute resolution has been made.

Section 59 provides perhaps the best indicator.

> 59 (1) [Repealed 2006-35-83.]
>
> (2) An application for dispute resolution must
> (a) be in the applicable approved form,
> (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
> (c) be accompanied by the fee prescribed in the regulations.
>
> (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party **within 3 days of making it**, or within a different period specified by the director.
>
> (4) The director may waive or reduce the fee if satisfied that
> (a) the applicant cannot reasonably afford to pay the fee, or
> (b) the circumstances do not warrant the fee being collected.
>
> (5) The director may refuse to accept an application for dispute resolution if
> (a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part,
> (b) the applicant owes outstanding fees under this Act to the government, or
> (c) the application does not comply with subsection (2).

(*my emphasis*)

According to subsection (2), to start to make an application for dispute resolution, the application itself must be in the approved form, include full particulars and be accompanied by the required fee. By subsection (3) an applicant must served the other party within 3 days of "making" the application. By imposing that time limit I think it is implicit that everything necessary to be done by the Residential Tenancy Branch in processing the application has been done, before that time limit begins to run. If it were otherwise, if say, an application was considered to be made the moment an applicant presented the application and required fee at the Residential Tenancy office, then the three day time limit imposed on the applicant might be unfairly reduced or eaten away by the time it takes the Residential Tenancy Branch to process that application.

Looking at it from a different prospective, an applicant cannot serve the other party, indeed has no originating documents to serve, until her application has been processed and approved by the Residential Tenancy Branch, until the hearing of the dispute has been scheduled to a particular date and arbitrator, until a "Notice of Dispute Resolution Hearing" letter has been prepared and, finally, until the applicant has been notified that

these things have been done and that her hearing package awaits her for service on the other party. It seems to me that only then can the three day service time limit in subsection (3) be fairly considered to have started to run against an applicant.

In this case, it appears the landlord did all that with her first application. She" made an application" to apply the deposit against her monetary claim and it appears she did so within the 15 day time period in s. 38. She did not serve that application on the tenant and it was classified "abandoned" as a result, but s. 38 does not say the landlord must make an application "and serve it on the tenant" with the 15 day period; only that she make an application. As can be seen by s. 59(3), above, making an application and serving it (giving a copy to the other person) are considered separate things.

It follows that the tenant is entitled to recover his $850.00 security deposit but he is not entitled to the doubling under s. 38 of the *Act*.

Conclusion

The tenant will have a monetary order against the landlord in the amount $850.00 plus the $50.00 filing fee for a total of $900.00

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: September 23, 2014

Residential Tenancy Branch