Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and the landlord confirmed they received the Application/Notice of Hearing by registered mail. The application by the tenant pursuant to the *Residential Tenancy Act* (the Act) was for orders as follows:

a) An Order to return double the security deposit pursuant to Section 38; and
b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The landlord said they were tenants and had rented a room to this tenant and they shared the facilities of the home. The tenant said he had paid a security deposit of $400 in May 2015 by interac transfer and he provided a copy of the transfer. He agreed to rent the unit for $800 a month. The tenant vacated the unit on July 14, 2015 and said he provided his forwarding address in writing by text on July 17, 2015.

The landlord disagreed and said they never received a forwarding address. Furthermore, the landlord said the $400 was to rent furniture for the room, it was not a security deposit. The landlords have since moved and refused to give the tenant their address for they said they have had a lot of trouble from persons looking for this tenant. They want no further problems.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Although the tenant shared facilities with the landlord, I find the evidence is that the landlord was also a tenant so section 4(c) of the Act does not apply to exclude this tenancy as the landlords were not owners of the home. The landlords stated they were not landlords but I find they fit the definition of landlord in section 1(c) of the Act as they are persons who were entitled to possession of the rental unit and exercised the rights of a landlord under the Act or tenancy agreement. A tenancy agreement is defined as an agreement that can be express or implied respecting a rental unit. I find the landlords exercised such rights as they collected a deposit, agreed to rent and collected rent from the tenant.

Although the landlords contended that the $400 was not a security deposit, I find the tenant's evidence conflicts as he said it was a security deposit. It is half the monthly rent which is the normal amount for a security deposit and he paid it a few months in advance. The interac transfer supports that it was paid. The tenant denied receiving copies of the landlords' evidence receipts and the landlord was unable to provide verifiable means of service so I place little weight on the receipts. I find the receipt dated May 29, 2015 for $400 stating "Furniture Rental" is inconclusive as there is conflicting evidence that this was its purpose. As this matter will be the subject of a future hearing and decision, I make no finding on whether the $400 was a security deposit or a furniture rental. Hopefully, both parties will submit and serve each other evidence on this point if there is a future hearing.

Although the landlords provided some late evidence of newspaper articles concerning financial activities of the tenant, I place no weight on this evidence as it does not concern the tenancy or the security deposit.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)). The parties were advised of this in the hearing.

I find insufficient evidence that the tenant ever served a forwarding address to the landlord. He said he sent it by text but I find no evidence of such a text, although the tenant sent many copies of other text messages in his evidence. As there is insufficient evidence of provision of the forwarding address in writing, I find this Application is premature and I dismiss it with leave to reapply. The landlord refuses to disclose their

new address for service so I advise the tenant to consult section 88 of the Act regarding service.

Conclusion:

The Application of the tenant is premature. I dismiss it with leave to reapply within the legislated time limits.

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: January 07, 2016

Residential Tenancy Branch