Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD   RR   FF

Introduction

Both parties attended and confirmed the tenant served his Application for Dispute Resolution by registered mail. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a)   An Order to return double the security deposit pursuant to Section 38;
- b)   An Order for a refund of overpaid rent ; and
- c) 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 and a rent refund 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 tenant said he replied to an online advertisement in February 2016, met a man who introduced himself as "Jerry" who toured him through the premises and he agreed to rent a room. Other rooms were rented to other occupants. He paid a security deposit of $275 in February 2016 and one month's rent of $550 in March but never moved in because he heard there was an eviction in process. He looked up the name of the owner of the home in land titles and served this Application on them for a refund of the money he had paid.

The landlord's agent explained that the owner had rented the whole house to "Jerry" in August 2014 and had served a Notice to End Tenancy for unpaid rent on him. However, he and all the occupants vacated in April 2016 before the Application to obtain an Order of Possession was heard. She emphasized that this Application is brought against the wrong landlord and he has no knowledge of where "Jerry" went. They have no forwarding address to assist this applicant.

In evidence is an etransfer of $275 to another party on February 25, 2016, some emails and statements of the tenant.
.
On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.
.

<u>Analysis</u>:

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)).

However, I find the tenant has brought the Application against the wrong landlord. I find the evidence of the owner of the home credible that he had rented the home to "Jerry" who apparently was renting out rooms. I find the owner received no rent or security deposit from this applicant/tenant. I find the owner of the home as named on the Application was not the landlord of the applicant.

<u>Conclusion</u>:

I dismiss the Application of the tenant/applicant in its entirety without leave to reapply as he has filed his Application against the wrong party. I find the named landlord was not his landlord. I find he is not entitled to recover filing fees due to his lack of success.

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 15, 2016

_____
Residential Tenancy Branch