



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested return of his security deposit.

The hearing was conducted by teleconference on June 26, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord noted on the residential tenancy agreement was a management and leasing company. On his Application for Dispute Resolution the Tenant named the owner of the company as the Landlord. Pursuant to section 64(3)(c) I amend the Tenant's Application to correctly name the Landlord on the Tenant's Application for Dispute Resolution.

Issue to be Decided

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

Background and Evidence

The tenancy agreement was provided in evidence and indicated this one year fixed term tenancy began January 1, 2017. The Tenant in the within action, and another Tenant, B.S., were noted as Tenants on the agreement. The agreement further provided that the Tenants paid rent of \$1,250.00 and a security deposit of \$625.00.

The Tenant testified that he vacated the rental unit. The Tenant B.S. continues to reside in the rental unit.

The Tenant testified that he provided his forwarding address to the Landlord in writing. A copy of an unsigned and undated letter was provided in evidence. In this letter the Tenant wrote that he paid a damage deposit of \$700.00.

The Tenant's mother stated that on February 3, 2017 and on March 2, 2017 the Tenant's mother, D.C., met with B.B. and G.M. and informed them that M.T. had moved out due to family violence.

In response to the Tenant's claims the Landlords' representatives testified that the Tenant has not formally ended the tenancy. They confirmed that the Tenant, B.S., continues to reside in the rental unit.

The Landlord's representatives further stated that at no time did they receive the undated and unsigned letter submitted in evidence by M.T.

The resident manager, G.M., confirmed that she met with the Tenant's mother, D.C., to discuss his tenancy. She further confirmed that she informed the Tenant's mother that the Tenant needed to provide written notice to end his tenancy as well as his forwarding address in writing.

Analysis

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

The Tenant applies for return of his security deposit. Section 38 of the *Residential Tenancy Act* provides that a tenant is entitled to return of their deposit at the end of the tenancy and once they have provided the landlord with written notice of the forwarding address to which they would like the security deposit sent. As security deposits are held in trust by landlords for the benefit of tenants, a landlord must deal with the security deposit in strict accordance with the *Act*; failure to do so may result in orders where the funds are doubled such as in section 38(6).

In the case before me the Landlord submits that the tenancy has not ended.

A tenancy must be ended in accordance with the *Residential Tenancy Act*. A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

The Landlords representatives testified that the Tenant did not provide written notice to end the tenancy. Although the Tenant provided a letter in evidence purporting to end the tenancy, that letter was neither signed nor dated. As well, the Tenant could not testify as to when it was sent, or how it was sent.

While it is always difficult to reconcile conflicting testimony, without conclusive corroborating evidence, I am unable to prefer the Tenant's evidence over that of the Landlord. Accordingly, I am unable to find that the Tenant ended the tenancy in accordance with the *Act*. Further, while he may have vacated the rental unit, the tenancy has continued as B.S. has remained in the rental unit. As well, both Tenants remain jointly and severally liable for the tenancy pursuant to the Tenancy Agreement.

As discussed during the hearing, once the Tenant provides written notice to end the tenancy pursuant to sections 45 and 52 the tenancy between the Landlord and both Tenants will end. At that time the Tenant may then request his security deposit pursuant to section 38 of the *Act*. The Tenant is cautioned that he bears the burden of proving that his security deposit was \$700.00, rather than the \$625.00 noted in paragraph 7 of the residential tenancy agreement.

Conclusion

The Tenant failed to end the tenancy such that his right to claim his security deposit is premature.

The Tenant's claim is dismissed 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: June 28, 2018

Residential Tenancy Branch