

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's application for a Monetary Order for return of double the security deposit and damage or loss under the Act, regulation or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to be heard.

The tenant objected to service of late evidence by the landlord. The tenant was agreeable to acceptance of the tenancy agreement provided as evidence by the landlord. Accordingly, I referred and relied upon the tenancy agreement provided by the landlord in reaching my decision.

Issues(s) to be Decided

1. Has the tenant established an entitlement to return of double the security deposit from the respondent?
2. Has the tenant established an entitlement to compensation for damage or loss from the respondent?

Background and Evidence

The parties provided undisputed evidence as follows. On March 22, 2009 the parties executed a written tenancy agreement for a tenancy set to commence April 1, 2009 with a fixed term set to expire September 1, 2009. The tenant paid a \$445.00 security deposit to the landlord on March 22, 2009. The parties participated in a move-in

inspection together and the landlord prepared a condition inspection report and provided a copy to the tenant.

I was also provided undisputed evidence that the tenancy agreement provides that at the expiration of the fixed term the tenancy would “continue on a month to month basis, or another fixed length of time, unless the tenant gives written notice to end the tenancy at least one clear month before the end of the term.” The tenant did not give the landlord notice to end the tenancy. The landlord did not give the tenant notice to end the tenancy. The tenant paid rent for the months up to and including December 2009 in the amount of \$890.00 plus \$20.00 for parking. On December 18, 2009 ownership of the property was transferred to the current owner (herein referred to as the new owner).

The tenant testified that the new owner contacted the tenant and indicated he would be raising the rent. The tenant was not agreeable to a rent increase. At that time the tenant was not residing in the rental unit; however, the unit was occupied by the tenant’s son. The tenant alleged that the new owner then approached the tenant’s son and entered into a new tenancy agreement with the tenant’s son.

The tenant submitted and the landlord acknowledged that the security deposit was not transferred to the new owner by the landlord. The tenant was of the belief that tenancies come to an end when the landlord sells the property.

Upon enquiry, the landlord testified that he had not entered into a new tenancy agreement with the tenant’s son before he transferred ownership of the property and that the tenancy was still in effect at the time ownership changed. In February 2010 the landlord sent the tenant a cheque for the amount of the security deposit.

In making this application the tenant is seeking return of double the security deposit and return of rent and parking for December 18 – 31, 2009.

Analysis

Upon hearing from both parties, I determined the parties were unfamiliar with the definition of a tenant versus occupant and when a tenancy begins and ends where a change of ownership of the property is involved. Below I have provided information to the parties with respect to such matters.

Under section 1 of the Act a tenant is defined as a person who has the right to possess a rental unit under a tenancy agreement. A person that occupies a rental unit is not necessarily a tenant. In this case, the applicant had the right to possess the rental unit under a tenancy agreement and I find the applicant was the tenant. The tenant's son did not have a tenancy agreement in place with the landlord and is considered an occupant until such time the son is a tenant under a tenancy agreement.

Under section 16 of the Act, the rights and obligations of a landlord and tenant commence when the tenancy agreement is entered into "whether or not the tenant ever occupies the rental agreement". Pursuant to the provision of section 16 the existence of a tenancy, and the rights and obligations of parties under a tenancy agreement, are not determined solely by occupation of a rental unit. Rather, the existence of a tenancy is determined by the tenancy agreement and the provisions of the Act with respect to when a tenancy begins and ends.

Upon review of the tenancy agreement I find the tenancy agreement commenced March 22, 2009 when the parties signed the tenancy agreement and the tenancy converted to a month to month basis after the expiration of the fixed term. The tenant paid rent pursuant to the terms of the tenancy agreement up to and including December 2009; therefore, I find the tenant's occupation of the rental unit up to and including December 2009 to be irrelevant.

A tenancy ends in a manner that complies with section 44 of the Act. I was not provided evidence by either party that this tenancy ended before the landlord transferred

ownership to the new owner. Therefore, I conclude that when the landlord transferred ownership of the property the tenancy was still in effect.

As the parties were informed during the hearing, tenancies run with the land, meaning a tenancy does not end merely because of a change of ownership of the land. Section 93 of the Act specifically provides that the obligations of a landlord under the Act with respect to a security deposit run with the land.

Commonly, when ownership of a property is transferred during a tenancy, the former owner conveys the security deposit and pro-rated rent to the new owner by way of the Statement of Adjustments. In this case that was not done and the landlord did not provide a clear explanation for not doing so. However, the landlord's failure to transfer a security deposit to the new owner is no consequence to the tenant. Clearly a security deposit was paid to the landlord by the tenant and since the tenancy was still in effect at the time ownership changed the failure to transfer the security deposit to the new owner is a civil matter between the landlord and new owner.

A security deposit does not have to be returned to a tenant until after a tenancy ends. Since the tenancy had not ended when the landlord transferred ownership I find the landlord named in this application was not obligated under the Act to return the security deposit to the tenant. Rather, the new owner had the responsibility to comply with the Act with respect to ending the tenancy and handling the security deposit.

As I did not find the landlord named in this dispute violated the Act, regulations or tenancy agreement I dismissed the tenant's application against the named respondent. The tenant is at liberty to make an application against the new owner of the property.

Conclusion

The tenant's application against the named respondent was dismissed. The tenancy was still in effect when the landlord transferred ownership of the property to the new owner. The new owner had the obligation to comply with the Act with respect to ending the tenancy and handling the security deposit. Whether or not the security deposit and pro-rated rent were transferred to the new owner by the former owner is a civil matter between the new owner and the former owner. Therefore, the tenant is at liberty make an application against the new owner of the property.

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 22, 2010.

Dispute Resolution Officer