



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNE, MNSD, RPP, SS, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy; for the return of her security deposit; for an Order requiring the Landlord to return her personal property; for authorization to serve documents in a different way than is required by the *Residential Tenancy Act (Act)*; and to recover the filing fee from the Landlord for the cost of filing this application. At the hearing the Tenant withdrew her application to set aside a Notice to End Tenancy; for an Order requiring the Landlord to return her personal property; and for authorization to serve documents in a different way than is required by the *Residential Tenancy Act (Act)*.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Tenant stated that she identified the respondent in this Application for Dispute Resolution as “Dieter Landlord”, as she did not know his surname. At the outset of the hearing the Landlord provided his proper name and the Tenant’s Application for Dispute Resolution was amended accordingly.

Both parties had the opportunity to serve evidence prior to this hearing. The Landlord did not submit evidence.

The Tenant stated that she sent copies of the Application for Dispute Resolution, the Notice of Hearing, and a letter dated November 10, 2010, via registered mail, to the Landlord on November 10, 2010. The Tenant cited a Canada Post tracking number, which corroborates that a package was mailed to the Landlord. She stated that the addressee on the Canada Post documentation was “Manager Apartment”. The Tenant contends that the package was sent to the manager at unit 311 of this residential complex. The Landlord stated that he did not receive this package from the Tenant.

I find that I have insufficient evidence to establish that she served these documents in accordance with section 88(c) of the *Act* and I therefore cannot conclude that this evidence was served in accordance with rule 3 of the Residential Tenancy Branch

Rules of Procedure. As it has not been established that this evidence has not been served in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure, I have not considered the letter dated November 10, 2010, which was included in that package.

In determining that the Tenant submitted insufficient evidence to show that the items mailed on November 10, 2010 were served in accordance with section 88(c) of the *Act*, I was influenced, in part, by the testimony of the Landlord, who denied receiving the mail. Given that the Landlord acknowledged receiving the documents that were mailed on November 26, 2010, I find that it is likely he would have acknowledged receiving the documents mailed on November 10, 2010 if they had been received.

In determining that the Tenant submitted insufficient evidence to show that the items mailed on November 10, 2010 were served in accordance with section 88(c) of the *Act*, I was influenced, in part, by the fact that the Tenant did not submit any evidence from Canada Post, such as a computer print-out, that shows the package was delivered to the correct address.

In determining that the Tenant submitted insufficient evidence to show that the items mailed on November 10, 2010 were served in accordance with section 88(c) of the *Act*, I was influenced, in part, by the fact that the Tenant did not know the Landlord's last name when she filed this Application for Dispute Resolution. I find it entirely possible that a package that does not contain a surname could be incorrectly delivered or returned to the sender.

In determining that the Tenant submitted insufficient evidence to show that the items mailed on November 10, 2010 were served in accordance with section 88(c) of the *Act*, I was influenced, in part, by the fact that the Tenant did not include the Landlord's suite number on her Application for Dispute Resolution. Although she stated at the hearing that she addressed the package to the Landlord and that she included his suite number in the mailing address, I find it entirely possible that the package was incorrectly delivered or returned to the sender, due to an incomplete address.

In determining that the address on the package may have been incomplete, I was influenced by the Landlord's testimony that the package mailed to him on November 26, 2010 did not contain his suite number, which causes me to question whether the first package was addressed correctly, and that the Tenant identified the recipient in the Canada Post documentation as "Manager Apt", with no details of the address.

The Tenant stated that she sent a second copy of the Application for Dispute Resolution, the Notice of Hearing, and some fact sheets to the Landlord, via registered mail, to the Landlord on November 26, 2010. The Landlord acknowledged receiving these documents in the mail, however he stated that the package did not name him nor did it specify his suite number. He stated that the package was delivered to him simply because he is known to the Canada Post employee.

The Tenant submitted a package of evidence to the Residential Tenancy Branch on November 30, 2010. She stated that she did not attempt to serve this package of evidence to the Landlord. As this evidence has not been served in accordance with rule 3 of the Residential Tenancy Branch Rules of Procedure, I have not considered the documents contained in that package. The Tenant had the opportunity to give oral evidence in regards to that evidence.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began sometime in 2009; that they had a written tenancy agreement, which was not submitted in evidence by either party; that the Tenant was required to pay monthly rent of \$730.00; that the Tenant returned the keys on, or about April 18, 2010, although she had the right to possess the rental unit until April 30, 2010; that the Tenant did not authorize the Landlord to retain the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she paid a security deposit of \$500.00 and the Landlord stated she paid a security deposit of \$365.00. The Tenant submitted no evidence to corroborate her statement that she paid \$500.00.

The Tenant stated that she provided the Landlord with her forwarding address, in writing, on March 31, 2010 when she provided him with written notice of her intent to end the tenancy. The Landlord acknowledged receiving the written notice to end the tenancy but he stated that it did not contain a forwarding address. Neither party submitted a copy of the notice to end tenancy.

The Tenant stated that she also provided the Landlord with her forwarding address, in writing, on March 31, 2010 or April 01, 2010 when she wrote it on a piece of paper and slid it underneath his door. The Landlord denied locating this document. The Tenant did not submit a copy of the document.

The Tenant stated that she also provided the Landlord with her forwarding address, in writing, on April 17, 2010. She stated that when she returned her keys to the woman who resides with the Landlord she wrote her forwarding address on a piece of paper and gave it to her. The Landlord stated that he did not receive this piece of paper.

The Tenant stated that she sent a letter, which contained her forwarding address, via registered mail, to the Landlord on November 10, 2010. The Tenant cited a Canada

Post tracking number that corroborates that statement. She stated that the addressee on the documentation from Canada Post was simply "Manager Apartment". The Tenant contends that the package was sent to the manager at unit 311 of this residential complex. The Landlord stated that he did not receive this package from the Tenant.

The Landlord stated that he sent a cheque, in the amount of \$286.60, which represented a partial refund of the security deposit, to the Tenant on May 07, 2010. He stated that he sent the cheque to an address in Lake Louise, Alberta, which he obtained from a cheque the Tenant used to pay her rent during the tenancy. The Tenant stated that the address used was a former address. The Landlord stated that the cheque was returned to the Landlord.

Analysis

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proving the amount of the security deposit rests with the Tenant and I find that the Tenant has submitted insufficient evidence to show that she paid a security deposit of \$500.00. In reaching this conclusion, I was strongly influenced by the absence of documentary evidence, such as a receipt or a tenancy agreement that corroborates the Tenant's statement.

Based on the testimony of the Landlord, I find that the Tenant paid a security deposit of at least \$365.00.

The Tenant also bears the burden of proving that she provided the Landlord with her forwarding address.

I find that the Tenant has submitted insufficient evidence to show that she provided the Landlord with her forwarding address on March 31, 2010 when she served him with written notice of her intent to end the tenancy. In reaching this conclusion, I was strongly influenced by the fact that a copy of the notice to end tenancy was not submitted in evidence and the Landlord's testimony that the notice did not contain her forwarding address.

I find that the Tenant has submitted insufficient evidence to show that she provided the Landlord with her forwarding address on March 31, 2010 or April 01, 2010 when she slipped a piece of paper that contained her forwarding address under his door. In reaching this conclusion, I was strongly influenced by the fact that a copy of the document was not submitted in evidence and by the Landlord's statement that he did not receive this document. I was further influenced by my finding that it seems illogical that the Tenant would provide her forwarding address to the Landlord on two occasions within a two day period.

I find that the Tenant has submitted insufficient evidence to show that she provided the Landlord with her forwarding address on April 17, 2010 when she returned the keys to

the rental unit. In reaching this conclusion, I was strongly influenced by the fact that a copy of the document was not submitted in evidence and by the Landlord's statement that he did not receive this document.

I find that it is reasonably probable that the Landlord did not receive a forwarding address for the Tenant prior to May 07, 2010. In reaching this conclusion I was heavily influenced by the Landlord's testimony that he attempted to return a portion of the security deposit to the Tenant at an old address. I find this statement to be credible and I find it highly unlikely that he would have returned the deposit to an old address if he had a forwarding address in his possession.

I find that the Tenant has submitted insufficient evidence to show that the Landlord received the forwarding address she mailed to the Landlord on November 10, 2010. In determining that the Tenant submitted insufficient evidence to show that the mail was received by the Landlord, I was influenced, in part, by the testimony of the Landlord, who denied receiving the mail. Given that the Landlord acknowledged receiving the documents that were mailed on November 26, 2010, I find that it is likely he would have acknowledged receiving the documents mailed on November 10, 2010 if they had been received.

In determining that the Tenant submitted insufficient evidence to show that the items mailed on November 10, 2010 were received by the Landlord, I was influenced, in part, by the fact that the Tenant did not submit any evidence from Canada Post, such as a computer print-out, that shows the package was delivered to the correct address.

In determining that the Tenant submitted insufficient evidence to show that the mail was received by the Landlord, I was influenced, in part, by the fact that the Tenant did not know the Landlord's last name when she filed this Application for Dispute Resolution. I find it entirely possible that a package that does not contain a surname could be incorrectly delivered or returned to the sender.

In determining that the Tenant submitted insufficient evidence to show that the mail was received by the Landlord, I was influenced, in part, by the fact that the Tenant did not include the Landlord's suite number on her Application for Dispute Resolution. Although she stated at the hearing that she addressed the package to the Landlord and that she included his suite number in the mailing address, I find it entirely possible that the package was incorrectly delivered or returned to the sender, due to an incomplete address.

In determining that the address on the package may have been incomplete, I was influenced by the Landlord's testimony that the package mailed to him on November 26, 2010 did not contain his suite number, which causes me to question whether the first package was addressed correctly, and that the Tenant identified the recipient in the Canada Post documentation as "Manager Apt", with no details of the address.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the

tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Tenant has failed to establish that she provided the Landlord with her forwarding address. As the Landlord does not have to return the security deposit until he receives the forwarding address, I dismiss the Tenant's application for the return of her security deposit.

Conclusion

As the Tenant has not established the merits of her Application for Dispute Resolution, I dismiss her application to recover the cost of filing this Application for Dispute Resolution.

I find that the Landlord was provided with a service address for the Tenant when the Tenant mailed the Notice of Hearing to the Landlord on, or about, November 26, 2010. I find that this was a service address for the purpose of providing evidence in regards to this Application for Dispute Resolution and that the Landlord could not reasonably consider this to be a forwarding address for the purpose of returning the security deposit, as he had been given notice that the security deposit was in dispute.

To provide clarity and resolution to the issue of the security deposit, I Order, pursuant to section 62(2) of the *Act*, that the Landlord is in possession of the Tenant's forwarding address on December 14, 2010, which is five days from the date this decision has been mailed. The Landlord is now obligated to either return the security deposit in full or to file an Application for Dispute Resolution claiming against it within fifteen days of December 14, 2010.

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: December 09, 2010.

Dispute Resolution Officer