



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of the agent for the tenant and in the absence of the landlords. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the landlord's Application for Dispute Resolution was sufficiently served on the Tenant.

The agent for the tenant filed an Application for Dispute Resolution on May 29, 2013. He testified that he sent a copy of the Application for Dispute Resolution by registered mail to the address for service in Germany but he has not received confirmation that it was received. He testified the landlords are residing in the rental unit and that he mailed a copy of the Application for Dispute Resolution by registered mail addressed to the landlords at the rental unit and search of the Canada Post tracking service indicates that it was accepted for service on May 30, 2013. A search of the Canada Post tracking service indicates it was not signed for by the landlords but by Jeffrey Concierge. For the reasons set out below I determined the tenant has failed to prove sufficient service on the landlords.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?

- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the Tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed term tenancy that began on December 15, 2012 and was to end on October 15, 2013. The rent was \$2800 per month payable on the 15th of each month. The tenant paid a security deposit of \$1400 and a \$1400 deposit for furniture and households. The tenancy agreement also contained a liquidated damage clause that provided that “if the tenant ends the fixed term tenancy before the end of the original term ...the landlord may treat this agreement as being at an end. In such event, the sum of \$2800 will be paid by the tenant to the landlord as liquidated damages and not as a penalty. It covers the landlord’s cost of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or damage to the rental unit or residential property.”

In early March the tenant advised the landlord that he could not continue to rent the rental unit due to its high rent cost. The tenant vacated the rental unit on March 15, 2013. The landlord has subsequently re-rented the rental unit.

Landlord’s Claim:

The landlord’s Application for Dispute Resolution makes a claim for a monetary order in the sum of \$4950 plus an order to retain the security deposit. The claims include the following:

- \$700 for reduced rent for the tenants who moved in after these tenants
- \$708 for replacement of carpets
- \$680 for carpet repair
- \$2800 for liquidated damages
- \$460 for 5 days of loss of rent

- \$298.56 for hydro
- \$668 carpets
- \$723.66 for furniture repair

The landlord's total claim is set at \$4950.

The landlords failed to attend the hearing. The representative of the tenant was present and ready to proceed. **As a result I ordered that the landlords' claim be dismissed without liberty to re-apply.**

Policy Guideline 17 permits an arbitrator to order the return of the security deposit to the Tenant where a landlords' application to retain the deposit has been dismissed. The landlords hold a security deposit of \$2800 which is double what is permitted under the Residential Tenancy Act. The landlords' application to retain the security deposit was been dismissed. The tenant did not attend the hearing in person and did not provide sufficient evidence to establish she is entitled to an order for the doubling of the deposit. The tenant's material alleges the forwarding address was provided in the middle of March. The materials filed by the landlord dispute the tenant gave the landlord a proper forwarding address as the forwarding address did not provide a postal code. The tenant subsequently filed documents that to establish that a forwarding address was sent to the landlord by registered mail in early April. However, the landlord filed a claim with 15 days of that date. As the tenant failed to attend the hearing and failed provide testimony to clarify when the proper forwarding address in writing was provided. As a result I determined the tenant has failed to present sufficient evidence for an order for the doubling of the security deposit. However, as the landlord's claim has been dismissed I **ordered that the landlords shall pay to the tenant the sum of \$2800.**

Tenant's Claim:

The tenant's Application for Dispute Resolution was filed on May 29, 2013. The representative of the tenant testified that he sent a copy of the Application for Dispute Resolution by registered mail to the address for service in the landlord's application in Germany but he has not yet received confirmation that it was delivered. He also testified that the landlord is presently living in the rental unit and he mailed it to the rental unit. He testified that a search of the Canada Post tracking service indicates it was successfully delivered on May 30, 2013.

I determined the representative of the tenant has failed to prove he has sufficiently served the landlords. The tenant's Application for Dispute Resolution was filed 6 days ago. A search of the Canada Post tracking service indicates that the person who signed for it identified himself as being the Concierge. At any rate the landlords have not signed indicating they have received the Application. Further, there is uncertainty as to whether the landlords are living in the rental unit. The materials submitted by the both parties indicate the landlords have rented the rental unit. I determined the tenants have failed to prove the landlords are residing in the rental unit or that the tenant has sufficiently served the landlords with a copy of the tenant's Application for Dispute Resolution. **As a result I order that the tenant's application be dismissed with liberty to re-apply.**

Summary:

In summary I order that the landlords pay to the Tenant the sum of \$2800.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 04, 2013

Residential Tenancy Branch

