



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; and to recover the fee for filing this Application for Dispute Resolution.

At the hearing on July 08, 2013 the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to each Tenant, via registered mail, at the service address noted on the Application, on April 13, 2013. The Landlord cited Canada Post tracking numbers that corroborates this statement. The Landlord stated that the Tenant provided him with the service address for a previous dispute resolution proceeding. At that hearing I determined that these documents had been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, and I proceeded with the hearing in the absence of the Tenant.

The hearing on July 08, 2013 commenced at 9:00 a.m. and continued until 10:00 a.m., at which point the Landlord requested an adjournment for the purposes of catching an airplane. As I did not believe the hearing could be concluded in the time remaining for the hearing on July 08, 2013 and the request for an adjournment was for an urgent matter, I granted the application for an adjournment. The Landlord was advised that a Notice of Reconvened Hearing will be mailed to the Landlord and the Tenant, and that both parties were expected to be present at the reconvened hearing.

The hearing was reconvened on August 14, 2013. After this hearing had begun the Tenant declared that she has never received the Application for Dispute Resolution or the Notice of Hearing for the hearing on July 08, 2013. She stated that she does recall receiving a notification that she had registered mail sometime in April of 2013 but when she attempted to retrieve that mail she was informed by Canada Post that the mail had been returned to the sender. The Tenant requested an adjournment for the purposes of obtaining a copy of the Application for Dispute Resolution and responding to the Landlord's claims.

The Landlord opposed the application for an adjournment as he served the Application for Dispute Resolution in accordance with section 89 of the *Act*. The Landlord stated

that he still has the envelopes that were returned to him, which indicates that the mail was returned to him on April 16, 2013.

Although the Landlord did serve the Application for Dispute Resolution in accordance with section 89 of the *Act*, I determined it was appropriate to adjourn this matter to provide the Tenant with an opportunity to review the Application for Dispute Resolution and respond to the Landlord's claims. In keeping with the principles of natural justice, I find that an adjournment would provide the Tenant with a reasonable and fair opportunity to respond to the claims being made by the Landlord and that an adjournment does not place the Landlord at a significant disadvantage, given that the matter relates only to a claim for financial compensation rather than possession of the rental unit.

In determining that an adjournment is appropriate in these circumstances I was also influenced, to some degree, by the Landlord's testimony that the envelopes were returned to him on April 16, 2013. As this is only 3 days after it was mailed to the Tenant, it appears that the Tenant did not have a reasonable opportunity to retrieve the registered mail. The Landlord was directed to send another copy of the Application for Dispute Resolution to the Tenant, via registered mail, by August 15, 2013.

The hearing was reconvened on October 22, 2013, at which time the Tenant stated that she received a copy of the Landlord's Application for Dispute Resolution from the Residential Tenancy Branch.

The Landlord submitted documents to the Residential Tenancy Branch on May 10, 2013 and June 14, 2013. At the hearing on July 08, 2013 the Landlord stated that he did not serve copies of these documents to the Tenant. As the documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch on June 27, 2013. At the hearing on July 08, 2013 the Landlord stated that copies of these documents were sent to the Tenant, via registered mail, at the address noted on the Application, on June 22, 2013. The Landlord cited a Canada Post tracking number that corroborates this statement. At this hearing I determined that these documents had been served in accordance with section 88 of the *Act* and I accept them as evidence for these proceedings.

At the hearing on August 14, 2013 the Tenant stated that she received the Landlord's evidence package on July 04, 2013 or July 05, 2013 but she was not yet aware that the Landlord had filed an Application for Dispute Resolution. She stated that she did receive the Notice of Reconvened Hearing from the Residential Tenancy Branch, which is why she was able to attend the hearing on August 14, 2013.

At the hearing on August 14, 2013 the Tenant stated that she submitted documents to the Residential Tenancy Branch, copies of which were delivered to the Landlord's residence on August 12, 2013. The Landlord stated that he located an envelope on

August 13, 2013 however he has not viewed the contents because he knew the documents had not been delivered within the timelines established by the Residential Tenancy Branch Rules of Procedure.

Given that the Tenant had not received a copy of the Landlord's Application for Dispute Resolution by August 14, 2013 and the hearing has been adjourned, which will provide the Landlord with ample time to consider the documents left at his residence on, or about, August 12, 2013, I find it appropriate to accept these documents as evidence. The Landlord was advised of this decision at the hearing on August 14, 2013.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/lost revenue and for damage to the rental unit?

Background and Evidence

At the outset of the hearing on October 22, 2013 the Landlord and the Tenant mutually agreed to settle this, and any other outstanding disputes related to this tenancy, under the following terms:

- The Landlord will send the Tenant a certified cheque for \$900.00, via registered mail, by November 01, 2013
- The Tenant will not enforce the monetary Order of \$583.84 that was awarded to the Tenant at a previous dispute resolution proceeding, provided she receives this \$900.00 payment
- The Landlord will withdraw this Application for Dispute Resolution
- The Landlord will not file any further claims in relation to this tenancy
- The Tenant will not file any further claims in relation to this tenancy
- The Tenant will abandon the Application for Dispute Resolution she has filed (#813284), unless the Landlord does not comply with his promise to mail the \$900.00 cheque by November 01, 2013.

Analysis

The parties have settled this dispute in accordance with the aforementioned terms.

Conclusion

This settlement agreement is recorded on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 22, 2013

Residential Tenancy Branch