



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss their applications with one another. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package and her written evidence sent by the tenant by registered mail on August 26, 2013. I am satisfied that the tenant served the landlord with these documents in accordance with the *Act*.

The landlord initially gave sworn testimony that he sent a copy of his dispute resolution hearing package to the tenant by certified mail on August 15, 2013. When I noted that this could not have occurred at that time as the Notice of a Dispute Resolution Hearing was not created by the Residential Tenancy Branch (the RTB) until August 23, 2013, he revised his testimony to maintain that he sent the package to the tenant on August 23, 2013. He said that he did not have a Canada Post Tracking Number available to confirm his mailing of his hearing package to the tenant. The tenant testified that she received some photographs from the landlord and a copy of her Residential Tenancy Agreement, but did not receive a copy of the landlord's application for dispute

resolution, nor any Notice of a Dispute Resolution Hearing for the landlord's application for dispute resolution.

Based on the evidence before me, I advised the parties that I was not satisfied that the landlord had demonstrated that he had served the tenant with a copy of his dispute resolution hearing package in accordance with section 89(1) of the *Act*. As I was not satisfied that service of the Notice of Hearing and the landlord's application for dispute resolution had occurred, I advised the parties of my decision to dismiss the landlord's application for a monetary award with leave to reapply.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This 3 ½ month fixed term tenancy began on May 15, 2013. Monthly rent was set at \$1,900.00, payable in advance on the first of each month, plus hydro. The landlord continues to hold the tenant's \$950.00 security deposit paid on May 15, 2013.

The landlord confirmed that on or about June 30, 2013, he received the tenant's written notice to end this tenancy by July 31, 2013, by email and by a note left in his mail slot. Although the tenant said that she vacated the rental unit by July 31, 2013, the landlord said that he did not receive the tenant's keys until August 5 or 6, 2013. The tenant confirmed that she did not actually hand her keys to the landlord, but left them in the mailbox and in an envelope for the landlord.

The tenant testified that she sent the landlord her forwarding address by registered mail on August 12, 2013. The landlord said that he received the tenant's forwarding address by registered mail and filed for authorization to retain the tenant's security deposit on August 29, 2013. In accordance with section 88 and 90 of the *Act*, the tenant's forwarding address was deemed served to the landlord on August 17, 2013, the fifth day after its mailing. I find that the landlord applied for dispute resolution for authorization to retain the tenant's security deposit within the 15-day time period allowed under the *Act*, which commenced on August 17, 2013.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the

hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to settle all issues arising out of this tenancy under the following final and binding terms:

1. Both parties agreed that all monetary issues arising out of this tenancy are to be resolved by the tenant's agreement to allow the landlord to retain the tenant's \$950.00 security deposit.
2. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues arising out of this tenancy and furthermore committed that neither party will initiate any new actions of any type or in any forum against one another arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I order the landlord to retain the tenant's security deposit plus applicable interest. No interest is payable over this period.

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: November 29, 2013

Residential Tenancy Branch

