



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

The Landlord has applied for Review Consideration of a decision and monetary order obtained by the Applicant Tenants returning double the security deposit to two of the Tenants (the “Original Decision”).

In the Original Decision the Arbitrator awarded two of the Tenants \$2,650.00.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party’s control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director’s decision or order was obtained by fraud.

The Landlord applies on the third ground above.

Issues

Does the Landlord have evidence that the Original Decision was obtained by fraud?

Facts and Analysis

The application contains information under section C 3. Fraud. The Landlord writes:

“A. False Information: The tenants (D.P. and B.K.) claimed using the Dispute Resolution Application and later testified under oath that I received the \$1,300 security deposit from them. And implicitly the tenant D.P. demand that I use the forwarding address in the Dispute Resolution Application to send the tenant D.P. back the full security deposit, otherwise s38 of the tenancy act is violated. (There was other false information, but this one affected the outcome the greatest)
B. Would have been True: If the tenants D.P. and B.K. admitted to not recalling nor given me any security deposit. The fact is I did not receive any of the \$1,300 security deposit from the tenants (D.P. and/or B.K.) According to my records there was no receipt written to D.P. and/or B.K. I do not have the original receipt,

but I found a carbon copy of the receipt attached as evidence. Looks like the original receipt was issued to [M.K.], an occupant. The forwarding address is NOT legitimate because there was no signature nor anything in writing from the occupant that paid the security deposit.”

[Reproduced as written.]

Decision

Based on the above, the Application for Review Consideration, the Original Decision and on a balance of probabilities, I find the Landlord's Application for Review Consideration must be dismissed.

I find the Landlord has failed to prove the Original Decision was obtained by fraud. The Tenants had named the occupant M.K. as a party to the proceeding. While M.K. was not a Tenant, it is clear on the Landlord's evidence that he paid the security deposit to the Landlord on behalf of the Tenants; however, the Original Decision sets out that the Landlord did not know at the hearing who paid the deposit. It is not open to the Landlord to now re-argue the case in a Review Consideration.

In any event, it does not matter who paid the deposit on behalf of the Tenants. For example, security deposits are often paid by parents or from social assistance, on behalf of a renter. Regardless of who paid, the deposit is paid on behalf of the renter and landlords are not entitled to keep deposits because they were paid by someone other than the renter. The Act requires the Landlord to either return the deposit to the Tenants or claim against it. The Landlord did neither. If the Landlord had returned the deposit to the Tenants within the required timelines, there would be no claim against him that would stand. It would still, as it is now, be up to the Tenants and M.K. to allocate the portions of the security deposit between them.

As to the Landlord having the forwarding address of the Tenants, the Arbitrator found as follows:

“The term “forwarding address in writing” is not defined in the *Act*. In my view, while an “email” might satisfy the “forwarding address in writing” requirement, having regard to the *Electronic Transactions Act*, SBC 2001, .c. 10, a text message over a phone line does not come within the terms of that law.

Yet, the tenants' application does provide the landlord with a forwarding address in writing. It gives an “address for service of documents or notices – where material will be given personally, left for, faxed, or mailed.” A landlord who forwards a security deposit to such an address cannot be faulted.”

[Emphasis added.]

In other words, the Arbitrator found the Landlord had the forwarding address in writing on the Tenants' Application, which I note has been signed on behalf of the Tenants.

Had the Landlord simply used this address to file for dispute resolution, or to return the deposit to, he would not have been found in violation of section 38 of the Act. I note the Arbitrator had the discretion to find in this manner and the Application does contain the information required for the Landlord to have acted and relied upon.

For these reasons, I dismiss the Landlord's Application for Review Consideration. I find the Landlord had insufficient evidence to prove the allegation of fraud. The Original Decision made on December 16, 2013, stands and remains in full force and effect.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 13, 2014

Residential Tenancy Branch