Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNSD, FF, 0

Introduction
This hearing dealt with two related applications. The landlord's application was for a monetary order. The tenant's application was for an order setting aside a notice to end tenancy and a monetary order. Both parties appeared and had an opportunity to be heard.

The tenant raised a preliminary objection to the landlord's application for dispute resolution. He argued that since the address shown as the landlord's address for service on the application was not the landlord's actual address, the application was not properly made and should not be considered. In fact, the address provided for the landlord is the business address of the landlord's agent, who was appearing on behalf of the landlord.

The definition of "landlord" in the *Residential Tenancy Act* includes "the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement or, exercises powers and performs duties under this Act, the tenancy agreement or a service agreement."

Section 58(1) states that a person may apply for dispute resolution. Section 59(2) states that an application for dispute resolution must be in the prescribed form; include full particulars of the dispute; and be accompanied by the prescribed fee.

Section 74(4) of the *Residential Tenancy Act* states that a party to a dispute may be represented by an agent or a lawyer.

As explained in *Residential Tenancy Policy Guideline 26: Advocates, Agents and Assistants,* an agent acts on behalf of the landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be the person who has acted for a party during the course of a tenancy, such as a property manager who acts on

behalf of a landlord, and as such may have evidence to present at the hearing. Agents have full authority to settle the claims and may be named as a party to the dispute.

The prescribed form includes as requirement that the applicant provide an address. The purpose of having every applicant give their address on the application is to provide the respondent with an address at which the respondent may serve their evidence and/or cross application upon the applicant. There is no requirement that the address for service be the actual residential address of either the applicant. If documents are served at the applicant's address for service as listed on the application for dispute resolution, they will be found to be properly served.

In this case the address provided is the business address for the landlord's agent. Not only is the landlord entitled to be represented by an agent, and therefore the provision of the agent's address is quite appropriate as an address for service, but it may also be considered as one of the places at which the landlord carries on business.

Based on the above I found that the landlord's application was properly completed and proceeded to hear both applications.

The tenant asked that his application for dispute resolution be amended to include the landlord's middle name. The landlord's agent consented to this amendment. Accordingly, the decision and order will reflect the full name of the landlord.

The tenant did not serve or file his evidence until after the time for doing so had passed. The landlord was offered an adjournment but the landlord's agent said he had reviewed the evidence and was prepared to go ahead with the hearing.

The parties advised that the tenant had moved out of the rental unit. As a result, the application to set aside the notice to end tenancy was not longer relevant.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced July 30, 2012. The monthly rent of $1100.00 was due on the first day of the month. The tenant paid a security deposit of $500.00. A move-in inspection was not conducted and a move-in condition inspection report was not completed.

The rental unit is the upper level of a duplex. The B C Hydro and Fortis accounts were registered in the tenant's name. The agreement was that the landlord would pay 30% of each account.

The question of who paid the $174.00 deposit to B C Hydro is an issue.

The parties filed the following documents regarding this issue:

- Security Deposit Request from B C Hydro addressed to the tenant. The receipt portion of the document shows a payment of $174.00 on April 16, 2012. The receipt is stamped by a Royal Bank stamp.
- Copy of a transaction record from the Royal Bank dated April 15, 2012. This shows a withdrawal of $174.00 and a payment to B C Hydro of $174.00.
- A statement from the Royal Bank regarding the landlord's branch to branch entry on April 15, 2013, in the amount of $174.00. The transit number on this document matches the transit number on the transaction record.
- Copy of a letter from the Royal Bank to the tenant dated December 31, 2013. The letter was in response to a garnishing order. It says "Please be advised that there are no accounts at this Royal Bank of Canada Branch in the name of the debtor."

The landlord argues that this is proof that the landlord paid the deposit and is therefore entitled to the credit that exists on the account.

The tenant testified that he paid the deposit and after doing so gave the paid receipt to the landlord's then agent and asked for reimbursement, which he never received. He argued that the response to his garnishing order shows that the landlord does not have an account with the Royal Bank and that the banking documents filed by the landlord are false. The tenant also testified that B C Hydro has since repaid the deposit to him in full.

The tenant sent a letter dated October 29, 2013 giving notice to end tenancy effective November 30, 20123 at the landlord's address as shown on the tenancy agreement. Although the landlord was represented by an agent at this time the tenant refused to deal with the agent. The letter to the landlord was subsequently returned by Canada Post with the notation "Moved/Unknown". The landlord's agent testified that the first time he saw this letter was when he received the tenant's evidence package.

There was a dispute resolution hearing between these parties on November 18, 2013. At the beginning of that hearing the tenant confirmed that he was moving out of the

renal unit on November 30. The arbitrator granted the tenant a monetary order in the sum of $1651.61. Since receiving that monetary order the tenant has been taking steps to enforce it.

The tenant did move out by November 30. Because of mix-up in communications the parties did not meet for a move-out inspection. The tenant testified that he completed the move-out form on his own. He wrote his forwarding address on the form and mailed it to the landlord. The tenant filed a receipt from Canada Post for a document mailed December 2 and delivered on December 9. Because it was not requested, there was no signature obtained from the recipient. The agent did say it was possible that the landlord may not have told him about the letter from the tenant.

After this date the landlord's agent sent the tenant e-mails asking for the tenant's forwarding address. The tenant did not respond to the landlord's agent.

The tenant filed his application for dispute resolution on December 24. After it had been served on the landlord the landlord's agent filed the landlord's application for dispute resolution and served it at the address shown on the tenant's application for dispute resolution.

The landlord claims $1100.00 for the December rent on the grounds that the tenant did not give proper notice to end tenancy.

The landlord testified that they did not start advertising the unit until after the tenant moved out. One of the issues in the previous dispute resolution proceeding was the tenant's allegation that the rental unit required significant repairs. The landlord wanted to be sure the unit was in good repair before advertising it for rent. The agent testified that the tenant was not cooperative in allowing them into the unit.

The tenant testified that the landlord and the agent came to the rental unit on November 20 to harass him. He allowed the landlord to come into the rental unit but refused access to the agent. The tenant filed copies of messages between himself and the agent during the last ten days of November. They include the following message on November 20 from the tenant to the agent: "Concerning the notice you left on my door, I have responded to it via the landlord email. <u>You are not welcome</u> in my suite for any reason. Wait until December 1 before you carry out your emergency repairs as you told the judge yesterday."

The landlord acknowledges that he owes the tenant $60.07 for the November Fortis bill and $15.93 for the November B C Hydro bill.

Analysis

Landlord's Claim for December Rent

Section 45 of the *Residential Tenancy Act* provides that a tenant may end a periodic tenancy by giving the landlord notice effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that the rent is payable under the tenancy agreement. In other words, when the rent is payable on the first day of the month, notice must be given on or before the last day of the month.

Section 88 allows a notice to end tenancy to be served by mail. Section 90 provides that any document given or served by mail is deemed to be received on the fifth day after it is mailed.

If the notice to end tenancy was mailed on October 29 it is deemed received by the landlord on November 3. The effective date of a notice to end tenancy given on November 3 is December 31. The tenant is responsible for the December rent subject to the landlord's statutory duty to mitigate his damages by attempting to re-rent the unit as soon as possible.

I find that the tenant's behaviour prevented the landlord from taking any measures to re-rent the unit before he vacated it.

Accordingly, I find that the tenant is responsible for the December rent in the amount of $1100.00

Security Deposit

Section 23 of the *Residential Tenancy Act* provides that at the beginning of every tenancy the landlord and tenant must conduct a move-in inspection together and complete a move-in condition inspection report in accordance with the regulation. Section 24 sets out the consequences for both parties if the inspection is not conducted, the report not completed, or a copy of the report not given to the tenant. For landlords the consequence is that their right to claim against the security deposit or pet damage deposit is extinguished.

Section 38(1) provides 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 to the tenant or, if the landlord has the legal right to do so, file an application for dispute resolution claiming against the deposit.

I accept the tenant's evidence that he mailed his forwarding address in writing to the landlord and that it was received by the landlord on December 9. (The proof of service filed by the tenant does not show when the item was mailed so the deeming provision of section 90 cannot be applied.)

As the landlord's right to claim against the security deposit had been extinguished by operation of section 24 the landlord's only option was to refund the security deposit within 15 days.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

The landlord did not return the security deposit to the tenant within 15 days and is therefore subject to the section 38(6) penalty. I find that the tenant is entitled to payment of double the security deposit, $1000.00

B C Hydro Deposit

I find that the landlord did pay the deposit. Although the tenant argued that the response to the garnishing summons showed there was no bank account that is not what the response proves. Responses to garnishing summons are very carefully worded. If the landlord's name on the bank account does not match the name on the garnished summons exactly, for example by including a middle name in addition to the first name and surname; or if the account has been closed in the recent past; the bank would have responded in the manner in which it did. I find the banking documents filed by the landlord convincing and accordingly, I find that the landlord is entitled to payment of $174.00 from the tenant.

November Utility Accounts

The landlord acknowledged responsibility for $60.07 for the Fortis account and $15.93 for the B C Hydro account, for a total of $76.00. The tenant asked that this amount be doubled, however, as explained in the hearing, the legislation does not allow for this.

Postage

The tenant asked for reimbursement of the postage he paid to serve various documents. As explained in the hearing, the legislation does not allow an arbitrator to award compensation to any party for the costs of preparing or serving and application for dispute resolution or the evidence in support of the application, or a party's expenses for participating in a hearing.

Filing Fees

As both parties have been successful on their respective applications they are both entitled to reimbursement of the fee they paid to file their application from the other. As these amounts will offset each other, no order will be made.

Set-Off

I have found that the landlord has established a monetary claim in the amount of $1274.00 comprised of loss of rental income for December in the amount of $1100.00 and the B C Hydro deposit in the amount of $174.00. I have found that the tenant has established a monetary claim in the amount of $1076.00 comprised of double the security deposit and the landlord's portion of the November utility bills. Setting one amount off against the other I find that the tenant must pay the landlord the sum of $198.00 and I grant a monetary order in this amount.

Conclusion

A monetary order in favour of the landlord in the amount of $198.00 has been made. If necessary, this order may be filed in the Provincial Court and enforced as an order of that court.

The previous monetary order remains in full force and effect.

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: February 20, 2014

Residential Tenancy Branch