



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of her security deposit and for money owed or compensation for loss under the Residential Tenancy Act (the “Act”), regulation or tenancy agreement.

The Landlord and two property agents including legal counsel for the Landlord appeared for hearing; legal counsel made submissions and presented evidence for the Landlord. The Tenant appeared with her daughter who both provided affirmed testimony during the hearing.

The Landlord confirmed receipt of the Tenant’s Application including the Tenant’s written evidence. The Tenant explained that she had submitted additional evidence prior to the hearing, which consisted of invoices, receipts and photographs. However, these were not before me as it had not been submitted within the time limits set out in the Rules of Procedure. Therefore, I was unable to consider the additional written evidence of the Tenant.

Legal counsel for the Landlord explained that they has submitted written evidence prior to the hearing but were unable to serve the Tenant with this as the Tenant had used the rental unit address as her address on the Application; the rental unit had been destroyed by a fire on June 14, 2014; Legal counsel submitted that mail coming to the address would not be suitable for service and provided documentation of attempts they made in order to serve the documents to the Tenant including enquiries with previous Landlords and requests from the Residential Tenancy Branch for a forwarding address; no address was provided to the Landlord.

The Tenant explained that Canada Post were holding mail coming to the rental unit address and that she was able to receive documentation if it were to be served to this address.

I accepted the Landlord's evidence that the address provided by the Tenant on the Application was not sufficient for the service of documents as the Landlord had no guarantee or written confirmation that the mail was being forwarded to the Tenant. Therefore, I allowed the Landlord's written evidence during the hearing.

Based on the foregoing, I also determined that the Tenant had not complied with Section 38(1) of the Act in providing the Landlord with a forwarding address in writing. Therefore, I invited the Tenant to provide a forwarding address to the Landlord so that the Landlord could be put on notice for the purposes of dealing with the Tenant's security deposit in the amount of \$750.00. The Tenant provided the Landlord with an alternative forwarding address.

The Tenant disclosed a monetary claim against the Landlord for \$30,000.00 and I informed the Tenant of the monetary claim limit of \$25,000.00 that the Residential Tenancy Branch has jurisdiction to deal with.

During the two hour hearing, the Tenant and her daughter spent a significant amount of time in making their submissions and arguments that the Landlord should be responsible for paying for their losses as a result of a fire that occurred on June 14, 2014 which damaged the house beyond repair and made it inhabitable. The Tenant made the allegation that the Landlord was responsible for the fire because there were plumbing issues with the tenancy and the rental unit was not up to building codes.

Legal counsel responded and referred to the written testimony of the fire inspector who rendered a report of the fire concluding that it was an accident. Legal counsel also made a number of other submissions and pointed to the fact that there was no evidence that the building was not up to code and that the content of the fire inspector's report points to the Tenant as being responsible which gives rise for a claim by the Landlord.

After the lengthy submissions were made by the parties, the Tenant and Landlord were offered the opportunity to settle the matter before the proceedings would be adjourned to hear from the Tenant's nine witnesses and the Landlord's witnesses. After much discussion, the Tenant demanded that the hearing be settled through mutual agreement on an amount payable by the Landlord.

Settlement Agreement

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.

I explained to the parties the provisions of a frustrated tenancy agreement as outlined in Policy Guideline 35 to the Act.

The Landlord **agreed** to settle the Tenant's Application **in full** by agreeing to return half of the Tenant's security deposit and \$800.00 for the prorated amount of rent paid by the Tenant for June, 2014 rent, for a total amount of **\$1,175.00**.

The Landlord agreed to deposit this amount into the Tenant's account on receipt of this written decision and the Tenant provided the Landlord with her account details which were verified during the hearing. The Landlord also has a forwarding address for the Tenant. As the security deposit has been dealt with under the settlement agreement there is no requirement for the Landlord to deal with this amount under Section 38(1) of the Act.

The Tenant is issued with a Monetary Order in the amount of **\$1,175.00** which is enforceable in the Small Claims court if the Landlord fails to make payment in accordance with this agreement after receipt of this decision.

The parties are cautioned to retain evidence in relation to the steps taken to meet the above terms and conditions.

This agreement and order is fully binding on the parties and is in **full satisfaction of the Tenant's Application**.

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: September 26, 2014

Residential Tenancy Branch

