Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD. PROPERTY MANAGEMENT DIVISION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, MNDC, 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; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. In this Application for Dispute Resolution the Landlord applied for compensation for unpaid rent, in the amount of $4,800.00.

The Agent for the Landlord stated that on, or before, September 17, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to each Tenant, via registered mail, at the service address noted on the Application. On September 17, 2014 the Landlord submitted Canada Post documentation to the Residential Tenancy Branch that corroborates this statement.

The Landlord and the Tenant agree that the service address was provided, in writing, on the condition inspection report that was completed at the end of the tenancy. I therefore find that these documents were served in accordance with section 89 of the *Residential Tenancy Act (Act).*

The Tenant stated that she did not receive any documents until April 09, 2015. In spite of only receiving the documents in April, the Tenant declined the opportunity for an adjournment for time to prepare for the proceedings and she stated that she is prepared to discuss the application for unpaid rent.

On March 11, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which include a "new" Application for Dispute Resolution, which is not stamped by the Residential Tenancy Branch, in which the Landlord increased the amount of his claim to $5,256.03, and a copy of a water bill.

On April 08, 2015 the Landlord submitted an amended copy of the second page of the original Application for Dispute Resolution, in which the Landlord increased the amount of his claim to $5,256.03, and supporting documents.

The Agent for the Landlord stated that on March 05, 2015 the amended Application for Dispute Resolution, the Notice of Hearing, and all documents previously submitted to the Residential

Tenancy Branch were sent to each Tenant, via registered mail, at the service address noted on the Application.

The Landlord submitted a typed document that declares the "next page is proof of service for the water bill, the inspection report and the modified application for dispute resolution". The "next page" is a photocopy of a Canada Post receipt that indicates mail was sent to both Tenants on April 07, 2015.

The Tenant stated that she received both packages on April 09, 2015.

On the basis of the testimony of the Tenant and the documents submitted in evidence, I find that the amended Application for Dispute Resolution, the Notice of Hearing, and supporting documents were mailed to the Tenant on April 07, 2015. I find that the Agent for the Landlord must have made a mistake when he testified the documents were mailed on March 05, 2015, in part, because the Canada Post shows they were not mailed until April 07, 2015 and, in part, because in a written submission the Landlord declared they were mailed on that date of the Canada Post receipt.

On the basis of the undisputed evidence, I find that the amended Application for Dispute Resolution, the Notice of Hearing, and all documents the Landlord have been served in accordance with section 89(1)(d) of the *Residential Tenancy Act (Act*)*;* however the male Tenant did not appear at the hearing.

Preliminary Matter

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure stipulate an applicant may amend an Application for Dispute Resolution prior to the start of the hearing. Rule 2.11 requires the applicant to serve a copy of the amended application on each respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing.

As the Landlord did not mail the amended application for dispute resolution to the Tenant until April 07, 2015 and the Tenant did not receive it until April 09, 2015, I find that the amended application was not served in accordance with Rule 2.11. I therefore do not allow the Landlord to amend the Application for Dispute Resolution to include a claim for unpaid utilities.

Given that this Application for Dispute Resolution was filed in September of 2014 and the utility bill is dated September 22, 2014, I find the delay in amending the Application for Dispute Resolution was unreasonable and places the Tenant at a significant disadvantage.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent?
Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Landlord is seeking compensation for unpaid rent from April, June, and September of 2014 and to retain the security deposit of $800.00. At the outset of the hearing the Tenant stated that this matter was determined at a previous dispute resolution proceeding.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution proceeding in August of 2014. The Tenant provided the file number of that proceeding and, with the consent of both parties; I searched Residential Tenancy Branch records for information on that proceeding and discussed those records with the parties during the hearing.

Residential Tenancy Branch records show that this tenancy was the subject of a hearing on August 18, 2014. The records show that the parties present at this hearing were present at the hearing on August 18, 2014.

Residential Tenancy Branch records show that at the conclusion of the hearing on August 18, 2014 an Arbitrator with the Residential Tenancy Branch concluded that the parties had mutually agreed to settle that dispute under the following terms:

1. The tenancy will end on or before 1:00 p.m. on August 31, 2014;
2. No rental monies are owed to the Landlord to August 31, 2014; and
3. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.

The Agent for the Landlord stated that the terms of the settlement agreement were dependent on the Tenant providing the Landlord with rent receipts. The Tenant stated that the settlement agreement was not contingent on the Tenant providing the Landlord with receipts of any kind. The Agent for the Landlord acknowledged that the Landlord did not request that the Arbitrator amend or clarify any of the terms of the settlement agreement she recorded in her decision.

Analysis

Section 63 of the *Act* grants an Arbitrator with the Residential Tenancy Branch authority to assist parties in reaching a settlement agreement and, if the parties settle their dispute during dispute resolution proceedings, to record the settlement in the form of a decision or an order. On the basis of the Residential Tenancy Branch records, which were viewed with the consent of both parties, I find that the parties reached a settlement agreement at the hearing on August 18, 2014, which the Arbitrator recorded in her decision of August 18, 2014.

Section 77(3) of the *Act* stipulates that except as otherwise provided in the *Act*, an Arbitrator's decision and Order is final and binding. Although the Agent for the Landlord contends that the Arbitrator did not correctly record the terms of that settlement agreement, I must conclude that the terms outlined in the Arbitrator's decision are the final and binding terms of the settlement agreement.

In determining this matter I note that section 78 of the *Act* authorizes a landlord or a tenant to make a request to clarify the decision and/or to deal with an obvious error or inadvertent omission in the decision or order. This request must be made within fifteen days of receiving the decision or order. As the Landlord did not apply to correct or clarify any of the terms of the

settlement agreement, I find that the terms outlined in the decision of August 18, 2014 are final and binding.

As the parties agreed on August 18, 2014 that no rent was due for the period ending August 31, 2014, I must conclude that the claim for rent owing for April and June has already been decided. I therefore an unable to reconsider that matter at these proceedings and I dismiss the Landlord's claim for unpaid rent for those April and June of 2014.

As the parties agreed on August 18, 2014 that the tenancy would end on August 31, 2014, I must conclude that the Tenant was not obligated to pay rent for September of 2014. I therefore dismiss the claim for unpaid rent for September of 2014.

As the Landlord has failed to establish a claim against the security deposit, I find that deposit of $800.00 must be returned to the Tenant.

I find that the Landlord's application has been without merit and I dismiss the application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As I have determined that the Landlord must return the security deposit of $800.00, I grant the Tenant a monetary Order for $800.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

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: April 15, 2015

Residential Tenancy Branch