



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, FF, SS

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 17, 2014 in accordance with Section 89 to the address provided by the tenant TR. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

The landlord explained that the tenant GW did not provide a forwarding address so she sent both hearing packages to the tenant TR. She further testified that in December 2014 she and the tenant GW were in contact and the tenant GW provided the landlord with his forwarding address so she sent the tenant GW a copy of the hearing package by registered mail.

During the hearing the landlord could not provide the tenant GW's address or the Canada Post tracking number for the registered mail she states she sent in January 2015. I ordered the landlord to call the Residential Tenancy Branch with the tenant GW's address as soon as possible after the hearing. As of the writing of this decision the landlord had not provided the tenant GW's forwarding address or any proof of registered mail being sent to that address.

Based on the testimony of the landlord, I find that the tenant TR has been sufficiently served with the documents pursuant to the *Act*. I also find that the landlord has failed to provide sufficient evidence that the tenant GW was served. As a result, I amend the landlord's Application for Dispute Resolution to name only the tenant TR who was sufficiently served in accordance with the *Act*.

While the landlord had sought, in her Application, an order to accept service of documents and evidence in a manner that is different than that required by the *Act*, I find, based on the above, that landlord is not entitled to such an order and I dismiss this portion of her Application.

In addition, I noted that the landlord had included in her Application she had promised the tenant a return of rent after the rental unit was flooded. As the landlord a refund of rent is not sufficiently rated to the issues of returning the security deposit or the landlord's claim for losses resulting from the tenancy I find the matters should not be heard during this hearing.

If the tenant believes that he is entitled to compensation for the landlord's failure to comply with the *Act*, regulation or tenancy agreement the tenant remains at liberty to file his own Application for Dispute Resolution to claim such a loss. I also note that nothing prevents the landlord, at any time, from providing the tenant with the rent refund without requiring a Dispute Resolution hearing or decision to order her to do so.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for losses resulting from the tenancy; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the tenancy began in February 2014 as a 1 year fixed term tenancy for a monthly rent of \$1,250.00 due on the last day of each month with a security deposit of \$625.00 paid. The landlord testified the tenancy ended as a result of a flood in the rental unit on September 24, 2014 that was not the fault of the tenant.

The landlord submits that the tenant failed to return the 2 access fobs; the condo keys; the parking pass or the mailbox keys. The landlord seeks the following compensation for these items: fobs - \$200.00; condo keys (lock replacement) - \$125.00; parking pass - \$100.00; mail box keys - \$50.00. The landlord has provided no evidence that she has paid any of the costs.

The landlord also submits that the tenant was photographed leaving garbage in an area that resulted in the landlord being fined \$200.00 from the strata. While the landlord has submitted emails indicating that an issue was going to be going in front of the strata council she did not provide any evidence that a fine was levied against her or that she had paid any such fine.

The landlord also seeks \$100.00 for cleaning parts of the rental unit that were not damaged by the flood. The landlord testified that this included the bedroom and bathroom. However, the landlord has not provided a condition inspection report recording the condition of the rental unit, either at the start or the end of the tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

While the landlord bases the substantial portions of her claim on the tenant's failure to comply with the requirements under Section 37 of the *Act*, I find that the landlord has failed to provide any evidence that would substantiate the value of any of the losses she has claimed.

I accept the tenant may have failed to return the fobs and keys, however, there is no evidence that the landlord incurred the costs as she has described in her testimony. As such, I find the landlord has failed to establish that she has suffered a loss or if she did, the value of that loss.

In relation to the landlord's claim for cleaning, I find the landlord has failed to provide any evidence that any portions of the rental unit required cleaning after the tenancy

ended. As such, I find the landlord has failed to submit sufficient evidence that damage exists or that she incurred a loss as a result of a failure to clean the rental unit.

As to the landlord's claim that she was required to pay a fine to the strata based on actions by the tenant I find the landlord has failed to establish that she was fined by the strata at all.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

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: May 11, 2015

Residential Tenancy Branch

