# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## REVIEW HEARING DECISION

Dispute Codes: MNSD, FF

Introduction

In response to the tenant's application a hearing was held on February 19, 2015. In her application the tenant sought a monetary order reflecting the double return of the security deposit (2 x $500.00), in addition to recovery of the filing fee ($50.00). The tenant appeared at the hearing while the landlord did not. Arising from the documentary evidence and the tenant's undisputed testimony, by Decision dated February 19, 2015, a monetary order in the amount of $1,050.00 was issued in favour of the tenant.

Subsequently, the landlord filed an Application for Review Consideration, claiming that he was unable to attend the hearing due to circumstances that could not be anticipated and were beyond his control. By Review Consideration Decision dated July 03, 2015, the application was allowed, and the Review Consideration Decision reads, in part:

> I find that the tenant sent the application for dispute resolution and notice of hearing to an incorrect address and therefore, the landlord had no notice of the hearing. I find that the landlord has proven that he was unable to attend the hearing due to circumstances beyond his control and I find that he is entitled to a new hearing.
>
> I therefore order that the decision dated February 19, 2015 be suspended until a new hearing has taken place.
>
> **Notices of the time and date of the hearing are included with this Review Consideration Decision for the landlord to serve on the tenant within 3 days of receipt of this Decision. The landlord should also serve on the tenant a copy of this Decision.**
>
> As the landlord did not receive a copy of the tenant's application for dispute resolution and evidence, I order the tenant to serve these documents on the landlord within 3 days of receipt of date on which the tenant receives the notice of hearing for the new hearing and a copy of the Decision. **The tenant should mail these documents to unit #503 rather than unit #305.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing

This Review Hearing was scheduled to commence by way of telephone conference call at 11:30 a.m. on September 02, 2015. The tenant attended and gave affirmed testimony. The landlord did not appear, and neither did the landlord submit any documentary evidence to the Residential Tenancy Branch.

The tenant testified that while she received documentation from the landlord pursuant to the Review Consideration Decision, as above, the landlord provided her with no documentary evidence.

The tenant also testified that she served the landlord with her application for dispute resolution and evidence pursuant to the Review Consideration Decision by registered mail. The address used for service to the landlord was the address provided in the Review Consideration Decision. Evidence provided by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the documentation was "successfully delivered" on July 16, 2015. Successful delivery was confirmed by way of the landlord's signature. Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlord has been duly served with the tenant's hearing package for this Review Hearing.

Issue(s) to be Decided

Whether the tenant is entitled to a monetary order reflecting the double return of the security deposit, and recovery of the filing fee.

Background and Evidence

Pursuant to an unconventional written tenancy agreement created by the landlord, tenancy began on June 01, 2012. Rent was due and payable in advance on the first day of each month. For the first 3 months of tenancy the rent was $995.00. Thereafter, effective from September 01, 2012 the rent was $1,195.00. A security deposit of $500.00 was collected. A move-in condition inspection report was not completed.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated October 20, 2014. The tenant did not dispute the notice and she vacated the unit on December 15, 2014. Despite email exchanges between the parties on December 09 & 10, 2014, the

result of which appears to be an understanding that the parties would participate together in a move-out condition inspection at 1:00 p.m. on December 15, 2014, the landlord did not attend, and a move-out condition inspection report was not completed.

By email dated December 15, 2014, the tenant provided the landlord with her forwarding address. As well, by letter dated December 15, 2014, the tenant informed the landlord of her forwarding address. The tenant's letter was sent to the landlord by registered mail, and accepted at the post office on December 17, 2014. The address used by the tenant was the "Service Address" provided by the landlord on the 2 month notice. Evidence includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "unclaimed by recipient."

Thereafter, as the tenant did not receive repayment of the security deposit, she filed an application for dispute resolution on January 28, 2015. The tenant served the landlord with her application for dispute resolution and the notice of hearing (the "hearing package") by registered mail. Evidence includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "unclaimed by recipient." Once again the address used for service of the hearing package was the "Service Address" provided by the landlord on the 2 month notice.

As to the "Service Address" used by the tenant for service to the landlord, in an email to the tenant dated June 24, 2015, the landlord claims as follows:

> Unfortunately, I had moved from that address on November 27th, 2014. Revenue Canada would have a record of this as would former employers, utility companies, financial institutions and more.

Additionally, by email to the tenant dated June 25, 2015, the landlord claims as follows:

> I did not provide you with the wrong address on the notice to end tenancy. At that time, that was my address. When you sent the paperwork over a month after leaving the property, I had moved.
>
> I did not receive any phone calls or emails. The use of my business email had stopped once the property was deemed to be sold. I have not used it since and I believe it is inactive.

In summary, the landlord claims that as he did not receive the tenant's email, or her letter, or her hearing package, he was unaware of either her forwarding address or the hearing scheduled for February 19, 2015.

Analysis

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section 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, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that tenancy ended on December 15, 2014. I also find that the tenant undertook to provide the landlord with her forwarding address by email dated December 15, 2014, and by letter dated December 15, 2014. While the landlord claims in an email to the tenant that "use of [his] business email had stopped once the property was deemed to be sold," and that he had "moved from [the "Service Address"] on November 27th, 2014," he has provided no conclusive evidence to support either claim.

I find on a balance of probabilities that the email address consistently used by the landlord in his communication with the tenant up until December 10, 2014 (his "business email"), was not abruptly discontinued within the 5 days leading up to December 15, 2014, which is when the tenant used that email address to inform him of her forwarding address. Further, the landlord has provided no reasonable explanation of a connection between sale of the property and discontinued use of that email address after December 10, 2014. On balance, I therefore find that the landlord received the tenant's email dated December 15, 2014.

Additionally, in the absence of any documentary evidence in support of the landlord's claim that he moved from the "Service Address" on November 27, 2014, which is approximately 3 weeks prior to when the tenant's letter informing him of her forwarding address was accepted at the post office on December 17, 2014, pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, I find that the landlord received the tenant's letter 5 days later on December 22, 2014.

Section 82 of the Act addresses **Review of director's decision or order**, in part:

> 82(1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Based on the tenant's documentary evidence, the affirmed / undisputed testimony of the tenant, the absence of the landlord at the Review Hearing scheduled in response to his successful Application for Review Consideration, and the absence of any supportive documentary evidence from the landlord, I find that the tenant has met the burden of proving that the landlord received her forwarding address after the end of tenancy by email and by registered mail, and that the landlord subsequently failed to repay her security deposit within the 15 day period required pursuant to section 38 of the Act.

Conclusion

The original decision and order dated February 19, 2015 are both hereby confirmed.

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 02, 2015

Residential Tenancy Branch