Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 25, 2016 she sent the Application for Dispute Resolution and the Notice of Hearing to the company with the initials TBGI (hereinafter referred to as the Receiver). The Agent for the Receiver, who is also named as a Respondent in this matter, acknowledged receipt of those documents.

The Tenant stated that on January 25, 2016 she sent the Application for Dispute Resolution and the Notice of Hearing to the company with the initials WI, which is the company named as the landlord on her tenancy agreement (hereinafter referred to as the Landlord). She stated that these documents were returned to her by Canada Post with notification that the recipient had moved or was unknown.

On January 25, 2016 the Tenant submitted 29 pages of evidence to the Residential Tenancy Branch. On January 24, 2016 the Tenant submitted 11 pages of evidence to the Residential Tenancy Branch, all of which were duplicates of evidence submitted on January 25, 2016. The Tenant stated that this evidence was sent to the Receiver, by fax, on January 24, 2016. The Agent for the Receiver acknowledged receipt of this evidence and it was accepted as evidence for these proceedings for the purposes of considering the issues involving the Receiver.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a landlord is to notify the landlord that a dispute resolution proceeding has been

initiated and to give the landlord the opportunity to respond to the claims being made by the tenant. When a tenant files an Application for Dispute Resolution in which the tenant applies for a monetary Order, the tenant has the burden of proving that the landlord was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act).*

Section 89(1) of the *Act* stipulates that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

(a) by leaving a copy with the person;
(b) if the person is a landlord, by leaving a copy with an agent of the landlord;
(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord; or
(e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

As the Respondent with the initials WI is a company, rather than an individual, the Tenant could not serve the Application for Dispute Resolution to the company with the initials WI in accordance with section 89(1)(a) of the *Act.*

As the Agent for the Receiver does not acknowledge being an agent for the company with the initials WI, I cannot conclude that the company with the initials WI was served in accordance with section 89(1)(b) of the *Act*.

The evidence shows that the documents mailed to the company with the initials WI were returned by Canada Post because the recipient had moved or was unknown. I therefore find that the Tenant has failed to establish that the Application was served to the company with the initials WI in accordance with section 89(1)(c) of the *Act.*

There is no evidence that the director authorized the Tenant to serve the Application for Dispute Resolution in any specific manner and I therefore cannot conclude that the Application was served to the company with the initials WI in accordance with section 89(1)(e) of the *Act.*

Issue(s) to be Decided:

Is the Tenant entitled to the return of her security deposit?

Background and Evidence:

The Tenant submitted a tenancy agreement that indicates she entered into a tenancy agreement with the company with the initials WI, which began on December 01, 2014.

The Tenant stated that:

- a security deposit of $900.00 was paid;
- a door deposit of $100.00 was paid;
- a condition inspection report was completed at the start of the tenancy;
- the Tenant did not authorize anyone to retain any portion of the security deposit;
- the company with the initials WI did not return any portion of the security deposit or garage remote deposit; and
- the company with the initials WI did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Receiver stated that she does not know if:

- a security deposit or door deposit was paid;
- a condition inspection report was completed at the start of the tenancy
- the Tenant authorized the company with the initials WI to retain any portion of the security deposit;
- The company with the initials WI returned any portion of the security deposit or garage remote deposit; and
- the company with the initials WI filed an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Receiver and the Tenant agree that:

- the tenancy ended on January 01, 2016;
- a condition inspection report was completed at the end of the tenancy;
- the Tenant provided the Agent for the Receiver with a forwarding address, by email, on December 30, 2015;
- the Tenant did not authorize the Receiver to retain any portion of the security deposit;
- the Receiver did not return any portion of the security deposit or garage remote deposit;
- the Receiver did not file an Application for Dispute Resolution claiming against the security deposit; and
- the Agent for the Receiver told the Tenant that she would need to contact the Landlord to recover her security deposit.

The Tenant submitted a Supreme Court of British Columbia Order, dated March 25, 2015, which relates, in part, to this rental unit.

The Agent for the Receiver stated that:

- the Receiver was appointed by the Supreme Court of British Columbia to collect rent for the rental unit as part of foreclosure proceedings;
- the Receiver is not the landlord of the rental unit;

- the Supreme Court of British Columbia Order designates the Receiver's obligations in regard to the rental unit;
- the Receiver does not hold any money is trust for the Landlord; and
- sections 6 and 7 of the Supreme Court of British Columbia Order expressly prohibit any court or tribunal from commencing any proceedings without the written consent of the Receiver or with leave of the Supreme Court.

Analysis:

Section 58(2)(c) of the *Act* stipulates that I do not have authority to resolve disputes that are substantially linked to a matter that is before the Supreme Court.

On the basis of the Supreme Court of British Columbia Order, dated March 25, 2015, I find that this tenancy is substantially linked to a matter that is before the Supreme Court and that I currently do not have authority to adjudicate this dispute.

In reaching this conclusion I was heavily influenced by sections 6 and 7 of the Supreme Court of British Columbia Order, which clearly prohibits any court or tribunal from commencing any proceedings without the written consent of the Receiver or with leave of the Supreme Court and by the absence of evidence that written consent or leave has been granted.

Conclusion:

I do not have jurisdiction to consider the merits of the Application for Dispute Resolution. The Tenant retains the right to file another Application for Dispute Resolution once she obtains the written consent of the Receiver or leave from the Supreme 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: September 06, 2016

Residential Tenancy Branch