



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$4543 for unpaid rent and damages
- b. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$3850
- b. An order for the return of the security deposit.
- c. An order that the landlord return her personal belongings.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The tenant testified she has not been given a copy of the landlord's Application for Dispute Resolution. The Tenant failed to file a Monetary Order worksheet.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to the return of security deposit?
- f. Whether the Tenant is entitled to the return of her personal belongings.

Background and Evidence

The tenancy began on October 1, 2015. The rent is \$900 per month payable in advance on the first day of the month. The tenant paid a security deposit of \$400 at the start of the tenancy.

Section 26(3) of the Residential Tenancy Act provides as follows:

- 26 (3)** Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not
- (a) seize any personal property of the tenant, or
 - (b) prevent or interfere with the tenant's access to the tenant's personal property.

The landlord stated that she has stored the tenants belongings and they are available for pick up. The parties agreed the tenant could pick up her belongings upon first giving the landlord 24 hours notice by telephone.

Landlord's Application - Analysis

The landlord testified she served the Tenant by mailing, by registered mail to where the Tenant resides. A search of the Canada Post tracking service indicates a parcel was given to the Surrey post office on September 28, 2016 and delivered to a community mailbox or parcel locker on September 30, 2016. The tenant testified she never received the materials. I determined the landlord failed to prove sufficient service. **As a result I ordered that the landlord's application be dismissed with liberty to re-apply.**

Tenant's Application:

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$3850. However she failed to provide particulars or a detailed summary of the claims she was making and the quantum of those claims as required by the Rules of Procedure. The Branch provides the parties with a Monetary Order worksheet to assist them with this. The tenant also expressed concerns that her belongings may have been damaged and that she injured her ankle while on the premises (she is scheduled for an operation in the next couple of weeks). A fundamental principle of our legal system is the applicant must give the respondent notice of the claims being made to order to give the respondent a fair chance to defend herself. That has not happen in this case. **I ordered that the Tenant's application be dismissed with liberty to re-apply.**

Conclusion

In summary ordered that the application of both parties be dismissed with liberty to re-apply.

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: November 04, 2016

Residential Tenancy Branch

