



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the corporate Landlord on November 10, 2016 for an Order of Possession. The Landlord also applied for a Monetary Order for the following: unpaid rent; to keep the Tenant’s security and pet damage deposits; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee.

Primary Issues

An agent for the Landlord, and the Tenant appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. The parties confirmed that the Tenant had vacated the rental unit and the Landlord had received possession of it. Therefore, I dismissed the Landlord’s Application for an Order of Possession as this was no longer required and is now a moot issue.

The Landlord had applied to recover from the Tenant unpaid rent for September 2016 and loss of rent for October and November 2016. The Landlord also applied to recover costs from the Tenant for: cleaning; unpaid utilities; and garbage disposal.

At the start of the hearing, the Landlord’s agent testified that she had served the Tenant with a copy of the Application and the Notice of Hearing documents to the Tenant by registered mail using the forwarding address provided by the Tenant. The Landlord’s agent provided the Canada Post tracking number into evidence to verify this method of service which showed that the document had been returned to the sender. The Landlord’s agent testified that she had also sent a copy of these documents to the Tenant by email. The Landlord confirmed that with respect to her photographic evidence she had only sent this to the Tenant by email.

The Tenant denied receipt of the Landlord's Application by registered mail because he was out of the country for a long period of time. The Tenant confirmed receipt of the Landlord's email which informed him that there were documents attached to the email about this hearing but stated that he was unable to open the attachment and had to obtain the call in details of this hearing from the Residential Tenancy Branch. The Tenant denied that he had received an email from the Landlord regarding any evidence and stated that he did not know of the evidence against him but wanted to provide evidence of any claim against him to rebut the Landlord's evidence.

Based on the foregoing, I determined the Landlord had served the Tenant with a copy of the Application and the Notice of Hearing documents pursuant to Section 89(1) (c) of the Act. The Tenant provided the Landlord with a forwarding address which the Landlord used to serve the Tenant. The Tenant had a responsibility to ensure or make arrangements to have his mail monitored if he was going to be away for a long period, especially when he was made aware by email that this hearing was going to be taking place.

With respect to the Landlord's evidence, I find the Landlord failed to serve this to the Tenant pursuant to the Act. As the Tenant testified that he was not in receipt of the Landlord's evidence prior to this hearing and the Landlord only used email as the method of service, I informed the Landlord's agent that I would not be able to consider that evidence. As a result, the Landlord withdrew her Application as she wanted to rely on this evidence as well as other evidence which she had not provided prior to this hearing. The Tenant did not object to this as he also wanted to provide evidence to rebut the Landlord's monetary claim.

During the hearing when I was collecting background information regarding this dispute, the parties argued over when the tenancy had ended and when the Tenant had provided a forwarding address. The Tenant submitted that the Landlord had not applied properly to deal with his pet damage and security deposit of \$1,750.00 each and therefore they were entitled to double the amount back.

However, the Landlord argued that in a previous decision she had been awarded \$3,500.00 in unpaid rent for September 2016 and had made a claim for September 2016 rent and retaining of the Tenant's security and pet damage deposit to be included and added onto this hearing. The parties confirmed that the Landlord had received a Monetary Order dated September 27, 2016 through the Direct Request Process, the file number for which is detailed on the front page of this Decision, and that no monies had been exchanged between the parties since that time.

In this respect, I informed the parties that pursuant to Section 38(3) and 72(2) (b) of the Act, because the Tenant had been previously ordered to pay the Landlord for September 2016 rent, the Landlord had a right to retain the Tenant's security and pet damage deposit pursuant to these provisions of the Act.

Therefore, I find the Landlord's claim for unpaid rent for September 2016 was already dealt with in the September 27, 2016 hearing. I also find that the issue of the retention and return of the Tenants' security and pet damage deposits is now moot as the Landlord has entitlement to these deposits pursuant to the Act.

As a result, the Landlord only retains the right to re-apply for: loss of rent in this tenancy; unpaid utilities; and cleaning and garbage removal costs. The remainder of the Landlord's Application is dismissed.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 29, 2016

Residential Tenancy Branch