



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KOKANEE FISHING CO. LTD. and SEA DRIFT FISH COMPANY LTD.
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes MNR, MND, FF

Introduction

This review hearing was ordered pursuant to an Application for Review Consideration filed by the tenant with respect to a hearing held on September 13, 2016 and a decision and Monetary Order issued by Arbitrator Maddia on September 16, 2016 with respect to the landlord's application for a Monetary Order for unpaid rent and damage to the rental unit.

Both parties appeared or were represented at the review hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The parties were informed that the purpose of this hearing is to determine whether the decision and Order issued by Arbitrator Maddia on September 16, 2016 should be confirmed, set aside or varied.

Pursuant to the review considering decision, the tenant was ordered to serve the landlord with a copy of that decision. I confirmed that the tenant had sent a copy of the Review Consideration Decision to the landlord's legal counsel via registered mail.

Since the review hearing was granted on the basis the tenant's agent had asserted that the tenant had not been served with the landlord's Application for Dispute Resolution and Notice of Hearing I explored service of the landlord's Application upon the tenant. The landlord submitted that the Application filed on January 26, 2016 was sent to the tenant via registered mail on January 29, 2016. A copy of the mailing label, including tracking number, had been provided as evidence. I noted that the tracking number on the mailing label is inconsistent with registered mail tracking numbers. The landlord's legal counsel stated that a search of the tracking number showed that the mail was delivered on February 2, 2016 but confirmed that no signature was required. I noted that a search of the tracking number also showed that the package was delivered in a City that is not the same as the tenant's service address.

As provided in Residential Tenancy Policy Guideline 12: *Service Provisions*, “registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.” Based on the mailing label and search of the tracking number I was not satisfied that registered mail had been used and the package was likely not delivered to the tenant, as the tenant had asserted.

As for the landlord’s evidence and Monetary Order Worksheet that were submitted to the Residential Tenancy Branch on September 1, 2016, the landlord’s legal counsel testified that it was sent to the tenant via email and regular mail on September 1, 2016. Email is not a permissible method of service under section 88 of the Act and I did not consider that method of service further. The tenant acknowledged receipt of the landlord’s evidence in September 2016.

Evidence for a proceeding is to be served at the same time as serving the Application to the extent possible but if the evidence is not available at the time of filing it is to be served as soon as possible but not less than 14 days before the scheduled hearing pursuant to Rules 2.5, 3.11 and 3.14 of the Rules of Procedure. Section 90 of the Act also provides that documents mailed to another party are deemed received five days later. Mailing evidence to the tenant on September 1, 2016 for a hearing set to take place September 13, 2016 was undeniably late. I enquired as to the reason for the delay in serving the evidence. The landlord’s legal counsel stated that it took some time to obtain and organize the evidence. I noted that the majority of the evidence consisted of receipts that were dated in March and April 2015 and I found that I was not provided a compelling reason why these receipts could not have been served with the Application or at least much earlier than September 2016.

A Monetary Order worksheet or detailed calculation of the monetary claim is to accompany the Application as provided under Rule 2.5 under the Rules of Procedure. If a claim changes, the applicant may submit an Amendment to an Application for Dispute Resolution provided it is served at least 14 days before the scheduled hearing as provided in the Rules of Procedure. In this case the landlord did not serve a Monetary Order Worksheet to the tenant at the time of serving the Application but sent it to the tenant less than 14 days before the scheduled hearing. The Monetary Order worksheet is not totalled and appears to add to an amount that is different than the amount appearing on the Application. Accordingly, I find the landlord failed to sufficiently serve a detailed calculation of the monetary claim at the time of serving the Application as required.

In light of the above, I informed the parties that I found there to be serious deficiencies in service of the Application, the detailed calculation that should have accompanied the Application, and the landlord's evidence. I informed the parties that given these deficiencies I was prepared to set aside the decision of September 16, 2016 but that I would reserve my decision as to whether to grant the landlord leave to reapply. The tenant indicated that he wished to have resolution to this matter as this was the second hearing he had attended with respect to the landlord's claims against him. The landlord's legal counsel acknowledged that the landlord had filed a previous Application that had been dismissed with leave as the landlord had sought to increase the monetary claim and it would appear that the landlord had not served an Amendment to that Application.

The tenant mentioned that he had made a proposal to the landlord's agent around the time the tenancy ended as the tenant acknowledged the tenancy ended prior to the expiry of the lease. Rather than risk dismissal of this Application, with or without leave, both parties turned their minds to using the hearing time to find resolution to this dispute by way of a settlement agreement. The parties reached a settlement agreement during the hearing and I have recorded it by way of this decision and the Monetary Order that accompanies it.

Issue(s) to be Decided

1. Should the decision and Orders issued on September 16, 2016 be confirmed, set-aside or varied?
2. What are the terms of settlement?

Background and Evidence

During the hearing, both parties agreed to the following terms in full and final satisfaction of any and all claims related to this tenancy:

1. The tenant shall pay the landlord the sum of \$2,300.00.
2. In addition to term number 1, the tenant authorizes the landlord to retain the tenant's security deposit of \$375.00.
3. This is a full and final settlement agreement and both parties are now precluded from filing a subsequent Application for Dispute Resolution against the other party with respect to this tenancy.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the settlement agreement in the form of a decision or order.

I have accepted and recorded the settlement agreement reached by the parties during this hearing and I make the terms an Order to be binding upon both parties.

In recognition of the settlement agreement, I provide the landlord with a Monetary Order in the amount of \$2,300.00 to serve and enforce if necessary. For added certainty, the landlord is authorized to retain the tenant's security deposit and both parties are now precluded from filing a subsequent Application for Dispute Resolution against the other party with respect to this tenancy.

The decision of September 16, 2016 is set aside and replaced with this decision. The Monetary Order of September 16, 2016 is set aside and replaced with the Monetary Order that accompanies this decision.

Conclusion

The decision and Monetary Order issued on September 16, 2016 are set aside and replaced with this decision and the Monetary Order that accompanies it.

As recorded in this decision, the parties reached a full and final settlement agreement during the review hearing. In accordance with the settlement agreement, the landlord is provided a Monetary Order with this decision in the amount of \$2,300.00 to serve and enforce if necessary.

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: January 18, 2017

Residential Tenancy Branch

