



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNSD

Introduction

On November 21, 2016 a conference call hearing took place to determine an Application for Dispute Resolution (the “Application”) made by the Tenant on May 25, 2016 for the return of double the amount of the her security deposit.

The Landlord failed to appear for the November 21, 2016 hearing. The Arbitrator who conducted that hearing considered the undisputed evidence of the Tenant and determined that the Tenant had served the Landlord with notice of the hearing and her forwarding address in writing. As a result, the Tenant was issued with a decision and a Monetary Order dated November 21, 2016 for \$800.00 which was double the amount of the Tenant’s security deposit pursuant to Section 38(1) and 38(6) of the *Residential Tenancy Act* (the “Act”).

On November 29, 2016, the Landlord applied for a review of the November 21, 2016 decision on the basis that he was unable to appear for the November 21, 2016 hearing. The Arbitrator who had conduct of the Landlord’s review application determined in a Review Consideration Decision dated December 6, 2016 that there was sufficient evidence to indicate that the Landlord was unable to appear for the November 21, 2016 hearing. As a result, the Landlord was granted this review hearing and the decision and orders dated November 21, 2016 were suspended until the outcome of this review hearing.

The Landlord and the Tenant appeared for this review hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

The Tenant stated that she had been notified of this hearing by the Residential Tenancy Branch and not by the Landlord. The Landlord confirmed that he had attempted to serve

the Tenant with a copy of his review Application and the Review Consideration Decision dated December 6, 2016 in person but the Tenant no longer resides at the physical address she provided on her Application.

However, when the Landlord was informed that the Tenant's Application also provided a mailing address which was served to him prior to the November 21, 2016 hearing, and that this was the address he was required to mail documents to the Tenant for this hearing to, the Landlord stated that he did not know about this.

As the Tenant appeared for this review hearing and was notified by the Residential Tenancy Branch of it, I determined that the hearing would proceed to hear the Tenant's Application pursuant to Section 71 (2) (c) of the Act. However, I determined that the Landlord was barred from relying on any documentary evidence he had provided with the review application during this hearing because the Landlord had not served it to the Tenant pursuant to Section 81(4) of the Act. The Tenant was informed of the reasons why the Landlord's review application was granted and why this hearing had been convened. The Tenant raised no further questions.

The hearing continued to hear the evidence of both parties. Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

As a result, after the parties had concluded their evidence presentation, I offered the parties an opportunity to settle the matter between them. The parties engaged into a discussion, discussed the options available to them, turned their minds to compromise, and decided to reach settlement of the dispute through mutual agreement.

Settlement Agreement

Both parties agreed to settle the Tenant's Application in **full and final satisfaction** of all of the issues associated with this tenancy. The parties agreed that the Landlord will return the full \$400.00 security deposit back to the Tenant by money order.

The Tenant agreed that she will pick up the money order from the Landlord's physical address detailed on the Tenant's Application by **3:30 p.m. on January 12, 2017**. This address is also detailed on the front page of this Review Hearing Decision which was confirmed by the Landlord during this hearing.

The Landlord is cautioned to retain documentary evidence in relation to the payment made to meet the above terms and conditions. The Tenant is issued with a new Monetary Order dated January 11, 2017 in the amount of **\$400.00** which is enforceable in the Small Claims Division of the Provincial Court **if** the Landlord fails to make the payment to the Tenant on or before January 12, 2017.

The Monetary Order issued to the Tenant in the amount of \$800.00 dated November 21, 2016 is now set aside and is of no use or effect; this is replaced with the Monetary Order dated January 11, 2017.

The above agreement and order is fully binding on the parties and is in **full and final satisfaction of all the issues** associated with this tenancy. No further Applications are permitted by any of the parties and this file is now closed. The parties confirmed their voluntary agreement to resolution in this manner both during and at the conclusion of the hearing. This file is now closed.

This Review Hearing 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: January 11, 2017

Residential Tenancy Branch