



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant's agent, LT and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's agent confirmed that she had authority to represent the tenant named in this application, who is her mother, as an agent at this hearing. This hearing lasted approximately 49 minutes in order to allow both parties to fully present their submissions.

At the outset of the hearing, the tenant's agent clarified that the tenant was only seeking to recover double the security deposit and the filing fee from the landlord. Accordingly, the other portions of the tenant's application are dismissed without leave to reapply.

Preliminary Issue - Service of Documents and Previous Hearings

This matter was previously heard by a different Arbitrator on November 30, 2016 and a decision was issued on the same date ("previous hearing" and "previous decision"). Only the tenant's agent attended the previous hearing, the landlord did not. The landlord applied for a review of the previous decision because she was unable to attend the hearing due to circumstances beyond her control. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated December 20, 2016.

By way of the review consideration decision, the landlord was required to serve the tenant with a copy of the review consideration decision, the notice of review hearing and the written evidence that she submitted with her review application. The tenant's agent confirmed receipt of the above documents from the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the review consideration decision, the notice of review hearing and the landlord's written evidence.

The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that the tenant's agent was served a one page witness statement, dated January 17, 2017, by way of email on January 18, 2017. The tenant's agent stated that she did not receive this evidence. As the tenant did not receive the evidence and it was served late, less than 7 days prior to this hearing, in violation of Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, I advised the landlord that I would not be considering the evidence at this hearing or in my decision. In any event, this evidence was irrelevant to the tenant's application because it related to the landlord's claim for damages to the unit, when the landlord has not filed an application for dispute resolution.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on June 15, 2011 and ended on May 15, 2016. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord. No move-in condition inspection report was completed but a move-out condition inspection report was completed for this tenancy. The tenant provided her written forwarding address to the landlord on the move-out condition inspection report on June 30, 2016. The tenant did not provide written permission to the landlord to keep any amount from her security deposit. No application was filed by the landlord to retain any amount from the security deposit.

The tenant's agent testified that the landlord was provided with a written forwarding address first by way of a letter, dated May 6, 2016, which was sent by registered mail on the same date. The landlord confirmed that she received this letter on May 11, 2016.

The tenant seeks a return of double the value of her security deposit, totalling \$1,200.00, and to recover the \$100.00 filing fee paid for her application.

The landlord stated that the parties settled the matter prior to the previous hearing in November 2016. The landlord said that she returned the original security deposit amount of \$600.00 to the tenant in exchange for the tenant cancelling the previous hearing on November 30, 2016. The landlord produced a letter, date October 14, 2016, which the tenant's agent confirmed receiving. The letter states the following, in part:

Regardless, I am sorry that things got off the rails and I just want to settle this peaceably and amicably. I have enclosed the damage deposit in a cheque for \$600. I truly hope we can put this behind us. If you cash the cheque, I will consider the arbitration which is scheduled in November, to be cancelled.

The landlord said that she did not appear at the hearing on November 30, 2016, because she knew that the cheque was cashed, she obtained a bank document to confirm same, and she assumed that the tenant cancelled the hearing based on the letter agreement. The landlord said that she called the tenant's agent to follow up and was advised that the tenant had cashed the cheque. The landlord stated that the tenant did not advise her as to whether the hearing was cancelled. The tenant's agent explained that she cashed the cheque but she did not cancel the hearing because there was no agreement to do so, she thought the landlord was trying to avoid paying double the deposit, she was on limited speaking terms with the landlord and she was fearful that the tenant would not get paid by the landlord so she cashed the cheque. The tenant's agent also claimed that she should not have cashed the cheque, in hindsight.

Analysis

While I have turned my mind to the testimony of both parties and their written evidence, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on May 15, 2016 and a written forwarding address was received by the landlord for the first time on May 11, 2016. While the landlord did not return the deposit or file

an application to claim against it within the 15 days under section 38 of the *Act*, I find that the tenant is not entitled to recover double the value of the deposit. I find that the parties reached an agreement for the landlord to pay the tenant \$600.00 in order to settle the matter prior to the hearing.

I find that the tenant's agent, who received the landlord's letter of October 14, 2016, and clearly read and understood the letter, agreed to settle the matter prior to the previous hearing. The tenant's agent claimed that the tenant is elderly and in poor health so she was unable to understand or deal with matters properly. Yet, it was the tenant's agent who confirmed receiving the October 2016 letter from the landlord and understanding its terms, before cashing the landlord's cheque.

The tenant, by cashing the cheque, also agreed to cancel the previous hearing but then failed to cancel it and proceeded on November 30, 2016, obtaining a monetary order for double the deposit plus the filing fee. I find that the wording in the landlord's letter is clear that if the tenant cashed the cheque, the previous hearing would be cancelled and the matter would be settled. The tenant cashed the cheque on October 28, 2016, as evidenced by the cancelled cheque bank printout that the landlord supplied, as well as the verbal affirmation from the tenant that the cheque was cashed. The tenant had no reasonable explanation for disregarding the above provisions, except to state that she should not have cashed the cheque and that she was fearful that the landlord would not ever pay her. The tenant's application was filed on June 7, 2016 and the agreement was made in October 2016. If the tenant had waited until October 2016 to get paid by the landlord, she could have waited an additional month for the previous hearing on November 30, 2016. Although the parties spoke on the phone after the cheque was cashed in October 2016 and there was no mention of whether the hearing was cancelled, this fact was already clear in writing and the tenant failed to abide by it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenant's security deposit. In accordance with the parties' agreement prior to the hearing, I find that the tenant is entitled to receive the original amount of her security deposit from the landlord, totalling \$600.00. As the landlord has already returned \$600.00 to the tenant, I find that the tenant is not entitled to any further monetary order.

As the tenant was not successful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

The Arbitrator at the previous hearing awarded the tenant double the value of the security deposit plus the \$100.00 filing fee, totalling \$1,300.00. The Arbitrator provided the tenant with a monetary order for \$700.00 taking into account the \$600.00 payment already made to the tenant in October 2016. Therefore, this review hearing decision replaces the previous decision and the previous monetary order of \$700.00 is cancelled and of no force or effect.

Conclusion

This review hearing decision replaces the previous decision, dated November 30, 2016.

The tenant's application to recover the filing fee, a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed without leave to reapply.

The previous hearing monetary order of \$700.00, dated November 30, 2016, issued to the tenant against the landlord, is cancelled and of no force or effect.

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 20, 2017

Residential Tenancy Branch