



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

On January 27, 2016 the Tenant filed an Application for Dispute Resolution seeking return of his security deposit, and a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement and to recover the filing fee.

The Tenant's application was heard on September 16, 2016. The Landlord failed to attend the hearing and, by Decision dated October 3, 2016, the Tenant was granted monetary compensation in the amount of \$758.05.

On November 15, 2016 the Landlord Applied for Review Consideration of the October 3, 2016 original Decision. By Review Consideration Decision dated November 21, 2016 the Landlord was granted a Review Hearing. Pursuant to the Review Consideration Decision the Landlord was directed to provide the Tenant notice of the hearing as well as his evidence in advance of the Review Hearing; for greater clarity I reproduce the relevant portions of the Review Consideration Decision as follows:

"...

Notices of the time and date of the hearing are included with this Review Consideration Decision for the landlord to serve to the tenant within 3 days of receipt of this Decision. The landlord must also serve a copy of this Decision to the tenant.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing.

..."

I accept the Tenant's testimony that the Landlord did not comply with the above and that the Tenant was only made aware of the Review Hearing as a result of his call to the residential tenancy branch.

The hearing before me convened as the requested Review Hearing pursuant to section 82 of the *Residential Tenancy Act*. Only the Tenant called into the Review Hearing which was conducted by teleconference and occurred over 63 minutes.

The Tenant testified that he was notified of this Review Hearing date by the Residential Tenancy Branch. He further stated that he was not provided with the Review Consideration Decision, nor was he provided any evidence from the Landlord as directed by Arbitrator Coyne's Review Consideration Decision of November 21, 2016.

The Tenant confirmed that the address for service provided on his Application for Dispute Resolution is the business address of his son, T.H. He confirmed that he is in regular contact with his son and that his son provides him with his mail as required. The Tenant further confirmed that he was at his son's business the day before the hearing on January 3, 2017 and that no evidence or documentation was provided by the Landlord at that time.

Arbitrator Coyne, in considering the Landlord's written submissions contained in his application for Review Consideration, found as follows:

"Consequently, I find it is likely that there are some discrepancies in the tenant's testimony compared to the landlord's evidence provided for this review consideration which led to the decision being made in partial favor of the tenant's application. In light of the new evidence, a new hearing will be held to determine the validity of the tenancy agreement and the amounts paid for the security and pet deposits."

Issues to be Decided as Directed by Arbitrator Coyne

1. Is the residential tenancy agreement provided by the Landlord in support of his Application for Review Consideration valid?
2. What amount did the Tenant pay for a security and pet damage deposit?

Background and Evidence

In his written submissions filed in support of his request for Review Consideration, the Landlord alleged the original decision was obtained by fraud.

It is the Landlord's responsibility to call into the hearing and provide his affirmed testimony and present his evidence and submissions in support of this serious allegation. As he failed to call into the hearing, the only evidence properly before me was the undisputed testimony and evidence of the Tenant.

With respect to the validity of the residential tenancy agreement provided by the Landlord in support of his Application for Review Consideration, the Tenant testified as follows.

The Tenant testified that the parties entered into a *verbal* residential tenancy agreement commencing June 15, 2014. He denied signing a *written* tenancy agreement.

Introduced in evidence by the Landlord in support of his application for Review Consideration was a written residential tenancy agreement purportedly signed by both parties. The Tenant testified that he did not sign such an agreement and that at no time was a written agreement created or signed.

As noted previously in my Decision, the Landlord failed to provide the Tenant with his evidence, consequently the Tenant was not able to review the written agreement provided by the Landlord. As such, during the hearing on January 4, 2017, I read some portions of the written agreement to the Tenant. One such portion includes the payment of rent as well as what is included in the rent; for instance, the agreement provides that the Tenant was provided parking for 4 vehicles. The Tenant testified that the Landlord complained about the number of vehicles he parked at the rental property and had he had such a written agreement he would have been able to rely on the provision that he had parking for 4 vehicles.

Further the Tenant stated that at no time during the tenancy did the Landlord provide him a written document confirming his name as R.D.W, which is why he initially filed for dispute resolution with the name provided by the Landlord on the mutual agreement to end tenancy, R.W. Notably, this document includes the name used by the Tenant when he initially filed for dispute resolution. Further, the signature on the document is the same.

As the signature on the residential tenancy agreement provided by the Landlord was similar to that of the Tenant's I asked him if there was any possibility he had signed such an agreement and simply forgot. The Tenant again testified that there was no such possibility.

With respect to the amount paid for a security and pet damage deposit the Tenant testified as follows.

The Tenant testified that he paid a security deposit in the amount of \$400.00; he stated that when he first viewed the rental unit he paid the Landlord's mother \$200.00 in cash as a deposit to secure the rental and the further \$200.00 shortly before moving into the rental unit. In response to the Landlord's claim that the Tenant did not pay a pet damage deposit, the Tenant testified that he did in fact pay such a deposit. He testified that he provided the Landlord \$200.00 as a pet damage deposit shortly after he moved in. He stated that the Landlord insisted on a pet damage deposit as the previous tenant's dog had damaged the lawn.

The Tenant further testified that the tenancy ended on November 15, 2014 by way of a hand written mutual agreement to end tenancy signed by the parties on November 1, 2014. A copy of this hand written document was provided in evidence.

In his application for Review Consideration the Landlord also alleged that he returned the "damage deposit but did not want a 'paper Trails' of his monthly payments or deposit. In response the Tenant stated that that this was not true and that in fact the Landlord did not return the security deposit or pet damage deposit. The Tenant stated that he spoke to the Landlord about the return of his deposits and in response the Landlord stated that he would not return them to the Tenant.

Analysis

This Review Hearing convened pursuant to section 82 of the *Residential Tenancy Act* which reads as follows:

Review of director's decision or order

82 (1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

- (a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,
- (b) by reconvening the original hearing, or
- (c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

My Decision is to be read in conjunction with Arbitrator Tangedal's original Decision dated October 3, 2016, and Arbitrator Coyne's Review Consideration Decision of November 21, 2016.

I find, based on the testimony and evidence before me, and on a balance of probabilities as follows.

I find the tenancy agreement submitted by the Landlord in support of his Application for Review Consideration to be invalid.

I accept the Tenant's testimony that the parties had a verbal agreement. I found the Tenant to be forthright and consistent in his testimony in this regard. I am also persuaded by the Tenant's testimony that had such a written agreement been in existence he would not have filed for dispute resolution using the incorrect name provided by the Landlord (and as used by the Landlord on the mutual agreement to end tenancy). Further, I am persuaded by the Tenant's testimony that conflict arose as to the number of vehicles he was permitted to park and that had such a written agreement existed, and which specifically provided him with four parking spots, the Tenant would have relied on that agreement and avoided this conflict.

I also accept the Tenant's testimony regarding the payment of deposits and find that the Tenant paid a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$200.00. Again, the Tenant was forthright and consistent in his testimony in this regard.

In all the circumstances I confirm the Original Decision and Monetary Order of Arbitrator Tangedal made October 3, 2016. For ease of reference I reproduce the following portion of that Decision:

“ ...

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$758.05**, comprised of \$600.00 for items 1 and 2, \$8.05 for item 3, and \$150.00 for items 6 and 7. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$758.05.

...”

Conclusion

The Original Decision and Monetary Order made October 3, 2016 are confirmed.

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 27, 2017

Residential Tenancy Branch