



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF (Landlord's Application)
 MNSD, FF, O (Tenants' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by Landlord on August 4, 2016 and by the Tenants on September 21, 2016.

The Landlord applied for a Monetary Order for: damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation and/or tenancy agreement; to keep the Tenants' security deposit; and to recover the filing fee from the Tenants. The Landlord amended her Application on September 12, 2016 to increase the monetary claim amount to include a claim for lost rent and unpaid utilities.

The Tenants applied for the return of their security deposit and to recover the filing fee from the Landlord. The Tenants also applied for "Other" issues, namely, the recovery of double their security deposit and to determine the amount of utilities that were owed by them to the Landlord.

The Landlord, an assistant to the Landlord, and the Tenants appeared for the hearing. The Landlord and the Tenants provided affirmed testimony during the hearing. The Tenants confirmed receipt of the Landlord's: Application; the amended Application; three pages of documentary evidence; and 89 photographs.

The Landlord denied receipt of the Tenant's Application. The Tenant stated that this was registered mailed to the Landlord on September 21, 2016. The Canada Post tracking number was provided into evidence and the Canada Post website shows that a number of attempts were made, including the leaving of a notice card at the Landlord's address to pick up these documents; these were then eventually returned to the Tenant as unclaimed. The Landlord stated that they were away for an extended period of time but received no notice card from Canada Post.

Based on the evidence before me, I determined the Tenants had met the service requirements of Section 89(1) (c) of the Act in serving their Application to the Landlord. I found that the Tenants should not be disadvantaged or prejudiced from having their claim heard because the Landlord was away for an extended period of time and therefore potentially missed receiving the Tenants' Application. Furthermore, I find there was no prejudice to the Landlord from determining the Tenants' Application in this hearing as the issue of the Tenants' security deposit would have been determined through the Landlord's Application in any case. In addition, the parties decided to resolve this dispute by way of mutual agreement and therefore, this issue was moot.

The Tenant testified that she served the Landlord's mother in law who resides with them at her place of residence with all her documentary evidence and her photographic evidence on January 5, 2017. The Landlord stated that her mother-in-law could not remember the exact date that she had received it but that her mother-in-law had only passed it on to her a few days before this hearing.

As a result, I determined that the Tenants had correctly served their evidence to the Landlord pursuant to Section 88(e) of the Act and that the Tenants should not be prejudiced from not having this considered because there was a failure of the Landlord's mother-in-law to pass this onto the Landlord in a timely fashion. Again, in any case, the issue of the service of evidence transpired to be moot as the parties resolved this dispute by way of settlement agreement.

Section 63 of the Act enables an Arbitrator to assist the parties to settle their dispute. 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. Therefore, after the parties had finished providing their evidence and oral testimony, I offered the parties an opportunity to settle this matter through mutual agreement. The parties considered this option for resolution of the dispute, turned their minds to compromise, and decided that it was better to resolve this matter through mutual agreement as follows.

Settlement Agreement

The Tenants agreed to offset amounts owed by them to the Landlord against the Monetary Order dated August 2, 2016 which was issued to the Tenants by the Arbitrator who conducted the July 21, 2016 hearing. As a result, the Landlord agreed to return back to the Tenants \$1,086.13 to satisfy both monetary claims in full and final satisfaction.

The parties agreed that the Landlord will make the agreed payment of \$1,086.13 to the Tenants on or before February 28, 2017. The Landlord is cautioned to retain documentary evidence of the payment made to meet the terms and conditions of this agreement.

Accordingly, the Monetary Order dated August 2, 2016 issued previously to the Tenants is now of no use and effect and is replaced with the attached Monetary Order dated February 1, 2017. This order is enforceable in the Small Claims Division of the Provincial court if the Landlord fails to make payment in accordance with the agreed deadline of February 28, 2017. Copies of this order are attached to the Tenants' copy of this Decision.

The agreement was confirmed with the parties both during and at the conclusion of the hearing. Both parties confirmed their understanding to move forward with resolution in this manner. Both files are now closed. 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: February 01, 2017

Residential Tenancy Branch