Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution (the "Application") made by the Tenant on August 5, 2016 for the return of her security deposit and to recover the filing fee.

The Tenant appeared for the hearing with an advocate and provided affirmed testimony. There was no appearance by the named Landlord but a party appeared for the hearing stating that he was the agent for the Landlord in this tenancy with the Tenant. This person also provided affirmed testimony.

Preliminary Issues and Findings

The Tenant testified that she had served a copy of her Application to the named Landlord by registered mail. The Canada Post website shows that the named Landlord received and signed for the documents on August 17, 2016. Therefore, I find the Tenant served the named Landlord pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

The Tenant's advocate stated that the Tenant engaged into tenancy agreement with a company Landlord. The Tenant provided a copy of the tenancy agreement; however this was all in Chinese with no translation, except that it showed a company name.

The Landlord named on the Application does not appear on the Chinese tenancy agreement provided by the Tenant. The Tenant testified that the Chinese tenancy agreement did not contain a service address for the company Landlord. As a result, they conducted a title search of the rental unit and named the Landlord on the Application because she was the registered owner of the rental unit who was then served with the Application.

The Tenant stated that when the tenancy ended she personally gave an agent of the company Landlord her forwarding address in writing on May 4, 2016.

The party appearing for the Landlord stated that the Tenant had signed a residential tenancy agreement in English with the company Landlord he was working for and not any agreement in Chinese. The Landlord's agent asserted that the Tenant had no agreement with the registered owner of the rental unit. The party stated that the Tenant had caused a significant amount of damage to the rental unit and was trying to serve the registered owner of the rental unit as a way to avoid having to serve and involve the company Landlord who is the proper Landlord in this dispute.

The Landlord's agent testified that neither the company Landlord or the Landlord named on the Tenant's Application had been served with the Tenant's forwarding address because if the Tenant had done so, they would have filed a claim for damage caused to the rental unit.

The Landlord's agent stated that he had attended the Residential Tenancy Branch prior to this hearing to see if there was any way to locate the Tenant or to make a claim against her. The Landlord's agent testified that when he informed the Residential Tenancy Branch of the rental unit address, they informed him of this hearing after conducting a search on their computer systems.

The Tenant denied that she signed any English tenancy agreement with the company Landlord but the Tenants' advocate acknowledged that without a translated copy of the Chinese tenancy agreement it was not a reliable document.

With respect to the above evidence, I make the following findings. The Act defines a Landlord as the owner of the rental unit. Therefore, I find the Tenant correctly named the party on the Application as a Landlord in this dispute, even though there was a dispute about who the correct landlord was in this case between the parties.

However, Section 38(1) of the Act requires a tenant to give a landlord their forwarding address in writing before the landlord is required to deal with the security deposit pursuant to the Act. In this case, I find the Tenant provided insufficient and unsubstantiated evidence that the Landlord(s) were served with her forwarding address. Therefore, I find the Tenant's Application was filed prematurely and I dismiss the Tenant's Application but provide leave to reapply.

However, as the Landlord's agent was present during the hearing, the Tenant was able to confirm a new forwarding address. This was confirmed with the Landlord's agent and

is also documented on the front page of this Decision for clarity purposes.

As a result, I put the company Landlord and the Landlord named on this Application on notice that they have 15 days from the date of this hearing, until February 23, 2017, to either: return the Tenant's security deposit; get the Tenant's consent in writing to make a deduction or keep the security deposit; or make an Application to claim against it.

As the Tenant had correctly named the registered owner of the rental unit as the Landlord in this case, but did not have the address of the company Landlord, the Landlord's agent provided the service address for the company Landlord named on the tenancy agreement provided for this hearing. This is also documented on the front page of this Decision.

Accordingly, if the Landlords fail to deal properly with the Tenant's security deposit, the Tenant may refile her Application and may name the following parties as a landlord for this tenancy: (a) the Landlord named on this Application using the same service address as that on the tittle certificate and/or (b) the company Landlord for which the Tenant was provided the address for.

The parties were also cautioned to provide any tenancy agreements into evidence for any future hearing and that these are required to be properly translated if they are not in English.

Conclusion

The Tenant's Application for the return of the security deposit is premature. The Landlord is obligated to deal with the Tenant's security deposit in accordance with the Act by February 23, 2017. The Tenant is at liberty to re-apply if the Landlords fail to comply with the Act. 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 08, 2017

Residential Tenancy Branch