



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, RPP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord return the tenant's personal property.

The tenant attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord attended the call. The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on January 27, 2017 and has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the landlord, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the security deposit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to refrain from providing others with personal information about the tenant or the tenancy?
- Has the tenant established that the landlord should be ordered to return the tenant's personal property, specifically mail?

Background and Evidence

The tenant testified that this month-to-month tenancy began on September 1, 2016 and the tenant moved out of the rental unit on January 10, 2017. Rent in the amount of \$850.00 per month was payable on the 1st day of each month and there are no rental arrears. The rental unit is a single family dwelling, and a tenancy agreement had been signed by the parties but a copy has not been provided for this hearing. No move-in or move-out condition inspection reports were completed.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord and no pet damage deposit was collected. The tenant has not provided a copy of the tenancy agreement but has provided a copy of a Shelter Information form showing the rent of \$850.00 per month and a security deposit of \$475.00 and signed by the landlord. The tenant requested by email that the security deposit be returned to the tenant on January 12, 2017 and in a letter sent to the landlord by regular mail on January 13, 2017. Also provided are a string of emails dated January 17 and January 18, 2017 between the parties. One email from the landlord states, in part, that the landlord has turned over the security deposit to the insurance company who would be contacting the tenant.

The tenant told the landlord that the heat wasn't working and the landlord told the tenant to turn on the furnace, but it didn't turn on. On November 2, 2016 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause dated November 2, 2016 with an expected date of vacancy of December 1, 2016 for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord told the tenant that to make the required repairs the rental unit needed to be vacant. Then the landlord told the tenant he had issued the wrong notice, and on November 9, 2016 served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property which contained an effective date of vacancy of January 9, 2017. The reason for issuing it was the rental unit would be occupied by the landlord or a close family member. The tenant believes the landlord has moved into the rental unit, and the tenant vacated the rental unit on January 10. Copies of the notices have not been provided for this hearing, however the tenant testified that on November 8, 2016 she told the landlord that the government Ministry who pays the rent told the tenant that the rental unit is not in livable condition, and the landlord replied that the tenant had 30 days to move out so he could move in.

The tenant had filed for arbitration which resulted in a hearing and Decision January 4, 2017. A copy has not been provided but the tenant testified that she had applied for return of the security deposit and monetary compensation for cleaning costs and electrical costs.

The Arbitrator ruled that the tenant wasn't entitled to return of the security deposit because the tenancy had not yet ended, and dismissed the balance of the tenant's monetary claim. In this case, the tenant applies for double the amount of the security deposit, or 950.00. The tenant has not been served with an application for dispute resolution by the landlord claiming against the deposit.

The tenant further testified that the landlord has been sharing the tenant's personal information to others, and refers to an Affidavit sworn by the tenant's ex fiancé which deposes that the landlord had told the deponent that the tenant was evicted for drug use and for causing damage to the rental property, and that an Arbitrator had ruled that the tenant be evicted effective January 9, 2017. None of the information is true, and the tenant seeks an order that the landlord refrain from communicating with the tenant's ex fiancé or from providing anyone with personal information about the tenant or the tenancy.

The tenant also testified that the forwarding address provided to the landlord is not the new home of the tenant but a place where the tenant can receive mail. On February 8, 2017 the tenant emailed the landlord asking that mail be sent to that address or the tenant would meet with the landlord to retrieve any; the tenant did not have the funds required to complete a formal change of address with Canada Post. Yesterday, the landlord emailed the tenant saying that he took the tenant's mail to the post office and it was available for pick-up. However, not all of the mail has been delivered, and the tenant seeks an order that the landlord provide all of it.

Analysis

I explained to the tenant the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decision to ensure that I did not make a finding on a matter that had already been heard and decided upon. I have read the Decision of the Arbitrator dated January 4, 2017 and I find that there were no orders or findings with respect to the security deposit.

The *Residential Tenancy Act* requires a landlord to return a security deposit or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the security deposit within that 15 day period. If the landlord does neither, the landlord must repay the tenant double the amount.

In this case, the tenant testified that she moved out of the rental unit on January 10, 2017 and sent the landlord a forwarding address in writing by regular mail on January 13, 2017. I have reviewed the evidentiary material, and considering the Shelter Information form signed by the landlord, I am satisfied that the tenant paid a security deposit to the landlord in the amount of \$475.00. I also consider the string of emails wherein the landlord advises the tenant that the security deposit has been forwarded to the insurance company, which is contrary to the *Act*, but also confirms in my mind that the landlord received the tenant's forwarding address in writing. Documents served by regular mail are deemed to have been delivered 5 days after mailing, and I find that the landlord is deemed to have received the tenant's forwarding address in writing on January 18, 2017. I also accept the undisputed testimony of the tenant that the landlord has not repaid any portion of it, and has not served the tenant with an application for dispute resolution claiming against the security deposit, and I have no such application before me. Therefore, I find that the landlord must repay the tenant double the amount of the security deposit, or \$950.00.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the tenant's position is that the landlord has been sharing personal information with others, and that such information has been damning and is not true. My jurisdiction is with respect to a tenancy, and I must consider what the *Act*, regulations and tenancy agreement say with respect to sharing information. The tenant has not provided a copy of the tenancy agreement, and the regulations specify what must be in the tenancy agreement, which does not include a statement prohibiting sharing information. Nor does the *Act* or the regulations prohibit sharing information by either party. I am not satisfied that the tenant has established that I should order the landlord to comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the tenant's application.

With respect to the tenant's application for an order that the landlord return the tenant's personal property, being mail, the tenant testified that she does not have the funds required to make a formal change of address with Canada Post, and I don't think that any fees charged by Canada Post for forwarding mail ought to be borne by the landlord. However, the mail belongs to the tenant and I find it just in the circumstances to order the landlord to provide all mail to the tenant at the forwarding address provided by the tenant, at the tenant's expense if any fees are charged by Canada Post to forward such mail.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$950.00.

I hereby order that the landlord to provide all mail to the tenant at the forwarding address provided by the tenant, at the tenant's expense if any fees are charged by Canada Post to forward such mail.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

This order is final and binding and may be enforced.

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: February 23, 2017

Residential Tenancy Branch

