



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, RPP, FF

Introduction

These hearings were convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") made on August 4, 2016. The Tenant applied for the following issues: for the return of her security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation, or tenancy agreement; for the Landlord to comply with the Act, regulation, or tenancy agreement; for the Landlord to return the Tenant's personal property; and to recover the filing fee from the Landlord.

Preliminary Issues

An agent for the Landlord and the Tenant appeared before a different Arbitrator on February 9, 2017 to determine the Tenant's Application. However, that hearing was adjourned as the Landlord's documentary evidence was not before that Arbitrator and the Landlord's agent requested an adjournment on medical grounds. The full decision to adjourn that hearing was detailed in that Arbitrator's Interim Decision dated February 10, 2017 under this same file number.

The hearing was scheduled to be reconvened in this hearing with that Arbitrator. However, that Arbitrator has since left the Residential Tenancy Branch. Therefore, as that Arbitrator did not hear any evidence in this case, he was not seized of the matters, and the file was scheduled for determination by me.

Both parties appeared for this reconvened hearing and provided affirmed testimony. The hearing process was explained and no questions were asked of the process. At the start of the hearing the Landlord requested another adjournment of the proceedings on the basis that she had a concussion injury that was preventing her from preparing evidence to refute the Tenant's monetary claim.

The Tenant vehemently resisted the Landlord's request for another adjournment stating that the Landlord had been given sufficient time to respond to the Application.

However, I also noted that the Tenant's documentary evidence was not before me. The Tenant explained that she had submitted it several days before this hearing to the Residential Tenancy Branch and had also served additional evidence to the Tenant that was also late pursuant to the time limits set by the Rules of Procedure.

The Tenant was informed that as her evidence had not reached the file in time for this hearing because she had served it late, it was prejudicial to both parties to allow the hearing to continue without having that evidence before me in this hearing.

The Tenant argued that her Application was only to determine the return of her security deposit of \$487.50 and to claim the filing fee and the doubling penalty provided by Section 38(6) of the Act. The Tenant then confirmed that this was the only matter that was to be determined on her Application. The Landlord confirmed that she had been served with a Monetary Order worksheet for a total claim of double the security deposit and a claim for the filing fee totalling \$1,075.00. The Tenant explained the remaining issues on the Application were being remedied through the criminal courts.

As a result, I informed the parties that I would consider their oral evidence with respect to the Tenant's request for the return of her security deposit and then make a determination on the Landlord's request for an adjournment. I informed the parties that the oral evidence would also help me to determine any directions to be given to the parties regarding any evidence to be submitted for the reconvened hearing as the Landlord claimed she was not in receipt of the Tenant's full evidence package. The parties were agreeable to this course of action.

Issue(s) to be Decided

Has the Tenant served the Landlord with a forwarding address pursuant to the Act?

Background and Evidence

The Landlord testified that this oral tenancy started on May 1, 2015 on a month to month basis. Rent was payable by the Tenant in the amount of \$975.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$487.50 by e-transfer on June 9, 2015. The Tenant testified the tenancy ended on July 31, 2015.

The Landlord testified that after the tenancy ended, the next day on August 1, 2015 she sent the Landlord an email with her forwarding address in writing for the return of the security deposit.

The Landlord stated that due to her concussion injury she was unable to recall all of the facts but agreed that the tenancy ended on July 31, 2015 and that the Tenant had paid a security deposit. The Landlord confirmed that to her knowledge she did not get any email from the Tenant with her forwarding address. The Tenant confirmed that she did not get a response from the Landlord to her email sent to the Tenant on August 1, 2015.

Analysis

Section 38 (1) of the Act states:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[Reproduced as written]

Section 39 of the Act states:

39 *Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[Reproduced as written]

In this case, the Tenant relies on her evidence that she had served the Landlord her forwarding address in writing which would have triggered the Landlord's requirement to deal properly in returning the Tenant's security deposit.

Section 88 of the Act provides for the methods of serving documents in residential tenancies. Email is not a permitted form of service for a document under the Act. However, if a party is able to present sufficient evidence that a respondent actually received a document that was served contrary to the Act, an Arbitrator may find the document has been served for the purposes of the Act.

In this case, the Tenant was not able to convince me that the Landlord had been served her forwarding address in writing by receiving the email sent on August 1, 2016. Neither did the Landlord satisfy me that she was in possession of evidence that would prove the Landlord received it, such as an email response from the Landlord to the August 1, 2016 email sent.

Therefore, I am only able to conclude the Tenant failed to comply with Section 39 of the Act and is now barred from providing the Landlord with a forwarding address because the one year period from the end of tenancy date has now expired

Conclusion

The Tenant failed to serve the Landlord with a forwarding address within one year of the tenancy ending. Therefore, the Tenant is barred from making a claim for the return of it. The Tenant's Application is dismissed without leave to re-apply.

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: March 14, 2017

Residential Tenancy Branch