



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by conference call in response to the Landlords' Application for Dispute Resolution (the "Application") for a Monetary Order for: damage to the rental unit; unpaid rent; to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee from the Tenant.

The Landlords appeared for the hearing and only one party provided affirmed testimony. There was no appearance by the Tenant during the 25 minute hearing. Therefore, I turned my mind to the service of documents for this hearing. The Landlord testified that she had sent a copy of the Application and the Hearing Package by registered mail on November 3, 2016. The Landlord provided the Canada Post Tracking numbers into oral evidence; these are detailed on the front page of this Decision. The Landlord gave me permission to track the documents on the Canada Post website. At the time of this hearing, the website shows that the documents have not been received and signed for.

The Landlord testified that the documents have been not returned to her and explained that at the end of the tenancy, the Tenant had not given her a forwarding address. The Landlord stated that at the start of the tenancy, the Tenant was required to provide an alternative address in case of an emergency. As a result, the Tenant provided her mother's address which the Landlord used to serve the documents for this hearing to. The Landlord confirmed that she did not know where the Tenant had gone to after she left for another province.

When a party makes an Application, they must satisfy the service requirements of the Act. It is an essential covenant of natural justice that a respondent is served and put on notice of the claim being made against them. Therefore, it is essential that an applicant is able to provide sufficient evidence that documents for a hearing have been properly served.

In this case, I am not satisfied that the Tenant has been served. The Canada Post website evidence is not sufficient enough to show that the Tenant received and signed for the documents sent to that address. Furthermore, there is insufficient evidence before me that

the Tenant vacated the rental unit and left the province to reside with her mother or that the Tenant is able to receive mail at that address. I find that an emergency address for the Tenant's mother provided at the start of the tenancy is not sufficient for the Landlord to use as a service address for the Tenant, particularly in the absence of the Canada Post website evidence.

The Landlord was informed of this during the hearing and the Landlord stated that her goal was to simply keep the Tenant's security deposit in an effort to avoid the doubling penalty provided for by the Act; however, she had been informed by the Residential Tenancy Branch to file an Application.

In this respect, I refer the Landlord to Section 38(1) of the Act, which provides that the requirement for a landlord to file an Application only takes effect after the landlord is provided with a forwarding address in writing. This requirement is mandated because a landlord can then use the address to file the Application.

A landlord is not barred from making an Application to keep a Tenant's security deposit if they can locate a tenant and prove service to that person. In such a case the doubling penalty provided by Section 38(6) of the Act would not apply because the tenant has not provided a forwarding address, providing service on the tenant can be proved. I also pointed the Landlord to Section 39 of the Act which states that if the tenant does not give the landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit indefinitely.

Conclusion

As the Landlord failed to prove service of the documents for this hearing to the Tenant, I dismiss the Landlord's Application with leave to re-apply. The Landlord is at liberty to retain the Tenant's security deposit until the Tenant provides a forwarding address in writing within one year after the end date of the tenancy. After such time the Landlord may retain the Tenant's security deposit indefinitely. 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: May 03, 2017

Residential Tenancy Branch