



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's agent KN, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent, who is her son, had authority to speak on her behalf at this hearing. The hearing lasted approximately 30 minutes in order to allow both parties to fully present their submissions.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and printed text messages, not the coloured photographs or the monetary order worksheet. The tenant was unable to provide a date of service or a tracking number for the registered mail of the coloured photographs and the monetary order worksheet. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application, notice of hearing and printed text messages. I notified both parties that I could only consider the tenant's printed text messages, not the coloured photographs or the monetary order worksheet because the tenant was unable to provide a date or tracking number for service and I find that the landlord was not served with the above documents.

The tenant stated that she did not receive the landlord's written evidence package. The landlord was unable to provide a date of service or a tracking number for the registered mail of her written evidence package. I notified both parties that I could not consider the

landlord's written evidence package, with the exception of the agreement noted below, because the landlord was unable to provide a date or tracking number for service and I find that the tenant was not served with the above documents.

Preliminary Issue – Settlement of Application before Hearing

During the hearing, both parties confirmed that the landlord returned the tenant's security deposit of \$365.00 to her, prior to the hearing. The tenant claimed that she was not pursuing this portion of her application at this hearing.

The tenant claimed that she was still pursuing her claims for recovery of her November 2016 rent of \$730.00, damaged clothing of \$70.00, and the \$100.00 application filing fee, from the landlord.

During the hearing, both parties confirmed that they signed a "Lease Termination Agreement" on November 28, 2016. The landlord provided a copy of it for this hearing. The agreement states the following, in part:

3. Release

The Landlord confirms that all rent due under the tenancy to date have been paid and that no further payments in rent or otherwise, are due. The Tenant confirms that the all deposits minus deductions have been returned by The Landlord and no further payments are owed by the Landlord.

Both parties release and discharge each other from all liabilities arising under The Tenancy EXCEPT the obligation on the part of The Tenant to pay rent (up to the end of the month of this agreement).

The landlord's agent maintained that the tenant cannot obtain further compensation from the landlord because the tenant agreed to release the landlord from any further claims. The landlord said that the tenant's security deposit was returned to her and the landlord kept November 2016 rent of \$730.00 from the tenant, as per the above agreement.

The tenant said that she did not know what she was signing and she did not understand the meaning of the above agreement. Yet, the tenant confirmed that she is a fourth-year university student who understands English well and reads documents before signing them. The tenant also confirmed that she had her father present when she signed the agreement. The landlord's agent confirmed that the agreement was

explained to both the tenant and her father and it was a simple, one page document. She later claimed that she did read and understand the agreement before signing it, but she was “stressed out” and wanted to get out of the rental unit. Initially, the tenant claimed that she did not remember whether she received a copy of the agreement from the landlord; later, the tenant agreed that she did receive a copy, she just did not have it in front of her during the hearing.

As advised to both parties during the hearing, I considered the above agreement at the hearing and in my decision because the tenant confirmed that she signed it and received a copy from the landlord. I find that the tenant was well aware of what she was signing because she is a sophisticated, educated party who understands English well. She also confirmed that she read the agreement and understood it before signing. The tenant had the benefit of her father being present and supporting her, while the landlord explained the agreement to the tenant and her father. The tenant confirmed that she was not forced to sign the agreement and the tenant was unable to prove any form of duress. The agreement clearly states that the landlord would keep November 2016 rent from the tenant and return the security deposit to the tenant. Both of the above terms were met, as per both parties’ evidence at the hearing.

Therefore, I find that the parties settled this matter prior to the hearing. I further find that the tenant is not able to obtain any form of compensation from the landlord because she agreed that the landlord did not owe her any further payments and she discharged the landlord from all other liabilities arising under the tenancy. I informed both parties during the hearing that the tenant’s entire application was dismissed without leave to reapply and she would not recover her filing fee.

Conclusion

The tenant’s entire application is dismissed without leave to reapply.

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: May 23, 2017

Residential Tenancy Branch