



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and his agent.

The matter was originally heard on February 20, 2017 by a different arbitrator and resulted in a decision dated March 17, 2017 that granted the tenant a monetary order for double the amount of the security deposit. The landlord applied for Review Consideration and by way of a decision by second arbitrator dated April 28, 2017 was granted a new hearing.

This hearing was scheduled as a result of the April 28, 2017 decision and is set to determine if the original hearing should be confirmed, set aside, or varied.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

At the outset of the hearing, the tenant testified that she had not received the notice of hearing documents from the landlord as was ordered in the April 28, 2017 Review Consideration decision. The tenant stated she had to contact the Residential Tenancy Branch to obtain the date; time; and call-in procedures. The landlord submitted that he was unable to serve the tenant with anything because he did not have her forwarding address.

In Review Consideration Decision of April 28, 2017 the arbitrator wrote:

"In his Application for Review Consideration he submits that he was not able to attend the hearing as he was in another country when the service of the

registered mail occurred. In support he provides a hand written letter from his friend K.V. who accompanied him on this trip, a copy of his passport showing his visa authorizing entry into the other country as well as registration for a vehicle which was purchased on this trip.

The Landlord also writes that the Tenant failed to provide her forwarding address in writing as required by section 38 of the *Residential Tenancy Act*."

In that decision the arbitrator found that the landlord could not have received the registered mail that included the tenant's Application for Dispute Resolution with her address. There was no evidence before me at this hearing that makes me question that arbitrator's finding.

During the hearing the tenant testified that she provided the landlord with her forwarding address verbally when she phoned him after the end of the tenancy in September 2016. She also testified that she sent him her address in writing by certified mail on December 7, 2016. The tenant submitted a copy of a receipt from Canada Post on that date in the amount of \$1.05. The tenant was unable to provide any tracking information or confirmation that the landlord received the certified mail.

The landlord testified that he had not received a forwarding address from the tenant at any time. The landlord asked for the tenant's address during the hearing, in the event that the original decision is confirmed and he is required to provide payment to her. The tenant provided her address verbally.

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on August 22, 2015 for a 1 year fixed term tenancy beginning on September 1, 2015 for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 paid.

The parties agreed the other tenant named in the tenancy agreement used \$300.00 towards her last month rent. The landlord stated that the other tenant did not get the landlords approval to convert any of the deposit to rent. The tenant testified the other tenant told her she had the landlord's approval.

The tenant submitted that she moved out of the rental unit by May 31, 2016 but that the other tenant named in the tenancy agreement stayed in the rental unit until the end of the fixed term, August 31, 2016. The landlord testified the tenants also sublet the basement to another occupant. The parties agreed the tenancy ended August 31, 2016.

The tenant seeks return double the amount of the balance of the security deposit, after consideration of the other tenant's portion, in the amount of \$900.00.

Analysis

I find that it is not disputed that the landlord did not serve the tenant with Notice of Hearing documents and that the tenant received only the Review Consideration decision of April 28, 2017. I accept the tenant contacted the Residential Tenancy Branch and confirmed the date, time, and call-in procedures for this hearing.

While I advised the parties in the hearing that I would determine whether or not it was appropriate to continue with the hearing despite the landlord not serving the tenant with the Notice of Hearing documents and that I would provide a written decision on that matter I find it is necessary to first consider all of the testimony and evidence of both parties regarding the provision of the tenant's forwarding address, prior to that determination.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In this case the burden rests with the tenant to provide sufficient evidence to establish that she had provided the landlord with her forwarding address by certified mail. I find that while the tenant has provided a receipt from Canada Post on the date that she states she sent the landlord her forwarding address, the receipt does not indicate what was mailed or to what address.

In addition, the landlord has testified that he has never received this correspondence from the tenant. The tenant confirms that she was not able to track delivery of this letter. As a result, I find the tenant has failed to provide sufficient evidence that she had provided the landlord with her forwarding address.

Furthermore, as I have found no reason to question the previous arbitrator's finding that the landlord never received the tenant's original Application for Dispute Resolution, I now find that up to the date of this hearing the landlord has not had the tenant's address.

Based on the above, and in consideration that the tenant obtained the date; time and call-in procedures by calling the Residential Tenancy Branch on May 16, 2017, well in advance of the hearing, I find there is no prejudice to the tenant to adjudicate the claim in full.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As I have determined that the tenant has failed to establish she had provided the landlord with her forwarding address until this hearing, I find the landlord is entitled to

either return the deposit to the tenant or file his own Application for Dispute Resolution to claim against it (naming either one or both of the tenants named in the tenancy agreement) within 15 days of receipt of this decision, pursuant to Section 38(1).

Therefore, I find the tenant's Application for Dispute Resolution seeking return of the security deposit was premature and I dismiss her Application for Dispute Resolution with leave to reapply should the landlord fail to comply with the requirements set out in Section 38(1) within 15 days of landlord receiving this decision.

Section 82 of the *Act* states 82(3) following the review, the director may confirm, vary or set aside the original decision or order.

Conclusion

Based on the above, I set aside the original decision and monetary order issued on May 17, 2017, pursuant to Section 82 of 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 *Residential Tenancy Act*.

Dated: June 06, 2017

Residential Tenancy Branch