



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF (Landlords' Application)
 MNSD, OLC (Tenants' Applications)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenants and the Landlords.

The female Tenant and both Landlords appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issues to be decided.

Preliminary Issues

The Tenants filed two Applications, both of which were made on December 9, 2017 requesting the return of their \$700.00 security deposit and for the Landlords to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenants also provided into evidence an amendment to the Application which purports to increase the monetary claim, but for an unchanged amount of \$700.00. In that amendment the Tenants provide the dispute address as the change of address for the Landlords.

At the start of the hearing, I asked the Tenant why they had filed two separate Applications which sought identical relief. The Tenant explained that the first Application she filed was lost by the Residential Tenancy Branch and therefore she had to file the Application again. However, after examining the electronic records pertaining to both files, there is no evidence before me that the first Application was lost. Rather the notes state that the Tenants were asked to make changes to the first Application and did not make them, therefore the first Application was processed in addition to the second Application.

I then turned my mind to the service of the Tenants' Applications to the Landlords. The Tenant testified that she served both Applications to the Landlords by handing them to the renters that had since taken occupancy of the rental unit after the tenancy had ended. The Tenant explained that she did not have a service address for the Landlords as this was not documented on the tenancy agreement. Therefore, she asked the renters to pass this onto the Landlords in December 2016.

The female Landlord testified that they received no Applications either from the Tenants or from the renters, but they did receive the amended Application in December 2016. The female Landlord testified that the amended Application did not contain a service address for the Tenant and they had not received any written notice from the Tenants of their forwarding address, therefore, they were not able to file their Application

A party making an Application bears the burden to prove service of the Application so that the respondent has been notified of the case against them. Section 89(1) of the Act provides for the ways in which an applicant can serve a respondent. Based on the foregoing evidence regarding the service of the Tenants' Applications, I find there is insufficient evidence before me that the Landlords were served with the Tenants' Applications.

in the absence of the Landlords' confirmation that they received the Tenants' Applications, the Act does not permit service via a third party, such as a renter who has since taken occupation of a rental unit since the ending of the tenancy. In this case, the Tenants would have been obligated to locate and serve the Landlords pursuant to the Act or apply with the Residential Tenancy Branch to serve their Applications by substituted service. On this basis, I dismissed the Tenants' Applications.

The Landlords applied on March 30, 2017 after stating they had received the Tenants' forwarding address on March 16, 2017. The Landlords applied for unpaid rent, to keep the Tenants' security deposit, and to recover the filing fee.

The Tenant confirmed receipt of the Landlords' Application. As a result, I informed the Tenant that as the Tenants had only applied for the return of their security deposit, this matter would be determined through the Landlords' Application so that the issue they had elected to deal with on the Tenants' Applications would in any case be dealt with in this hearing.

During the hearing, the parties confirmed that the tenancy had been mutually ended at the start of November 2016 by way of a verbally agreement and that this agreement was contingent upon the Tenants allowing the Landlords to keep the Tenants' security

deposit in return for allowing the fixed term tenancy to end. The Tenant confirmed that she had given consent for the Landlords to keep her security deposit pursuant to this verbal agreement but was now withdrawing the consent because the security deposit can only be retained for damage to the rental unit, of which there was none.

Analysis & Conclusion

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

After the parties had finishing providing their evidence and submissions, I offered the parties an opportunity to deal with this dispute by mutual settlement. The parties were informed that this was a voluntary process and that if the parties were not able to successfully reach agreement then I would make legal findings based on the evidence before me.

As a result, the parties decided that mutual agreement was the best form of resolution in this matter. Accordingly, the parties agreed to return to the original verbal agreement that was made between them that led to the ending of the tenancy. The Tenant agreed that the Landlords could keep the security deposit of \$700.00 and the Landlords agreed that this amount would be in full satisfaction of their Application.

The parties agreed that was agreement was made on a voluntary basis and that it was in full and final satisfaction of this tenancy. Therefore, no further Applications are permitted and all three files are now closed.

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.

June 9, 2017

Residential Tenancy Branch