



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. The Landlord states that the application for dispute resolution and notice of hearing (the “Materials”) were sent to the Tenants by express post requiring a signature for delivery. The Materials were sent to the dispute address as the Tenants had forwarded their mail from that address. The Landlord provides a postal document of this forwarded mail process. The Landlord provides a postal print out indicating that Tenant MK signed for receipt of the Materials.

Section 89 of the Act provides that an application for dispute resolution must be given in a number of ways. The only provision for giving the application to a tenant by mail is through registered mail to the address at which the person resides. As the Landlord did not give Tenant JK the Materials by registered mail at the residential address of Tenant JK and as there is no record of Tenant JK receiving the Materials I find that the Landlord did not serve Tenant JK as required under the Act and I dismiss the application as against this Tenant.

Section 71 of the Act provides that an order may be made that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act. Given the postal mail forwarding evidence and the evidence of Tenant MK's signature for receipt of the mail I find that the Materials were sufficiently given to Tenant MK for the purposes of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Proceedings and Analysis

At the outset of the hearing the Landlord identified a Witness that was attending the hearing with the Landlord. The Witness stated that he had been involved with most of the tenancy and that he was the partner of the Landlord. The Witness was informed that if he was also a Landlord he could remain in the hearing but that if he was only a Witness he had to leave the room until ready to provide that evidence. It was explained that a witness could not be privy to proceedings until after they provided evidence. The Landlord stated that the Witness was not a landlord and the Landlord was then instructed to have the Witness leave the room and hearing until the Landlord was ready to call the Witness for its evidence. The Landlord then confirmed that the Witness had left the room.

During the hearing and while the Landlord was giving evidence on its claims the Witness was heard over the conference call giving the Landlord the evidence to provide for its claims. When questioned about the presence of the Witness the Landlord became evasive and made vague statements that the Witness was no longer in the room or that the Landlord had her back turned and did not see anyone or that the Landlord could not hear anything out of her one ear even if the Witness had been saying anything or that the Witness only came into the room to retrieve medicine. Although asked, the Landlord refused to answer how long the Witness had been listening to the hearing proceedings and providing direction to the Landlord. Although the Landlord ultimately stated that the Witness had only whispered evidence once to the Landlord, I did not accept this evidence and informed the Landlord that the Witness

could no longer be called for evidence. I also cautioned the Landlord about being truthful during the proceedings. The hearing continued with the Landlord's assurances that the Witness was no longer present. The Landlord was given further opportunity to provide evidence of its claims.

The Landlord's evidence of the terms of the tenancy is as follows: the tenancy started on May 15, 2016 and the Tenants moved out of the unit on January 30, 2017. At the outset of the tenancy the Landlord collected \$500.00 as a pet deposit. The Tenants did not provide a forwarding address. The Landlord provided the Tenant with three opportunities for a move-out inspection. The Landlord sent the offers by email and text. No text messages were provided as evidence. The Landlord conducted the move-out inspection alone in mid-February 2017.

The Landlord claimed \$952.00 for painting the kitchen walls and ceiling that the Landlord stated were damaged by smoke from a kitchen grease fire. I note that the photos, some of which show a date and some of which do not show any date, do not show evidence of smoke damage on any walls. The Landlord claimed the cost of repairs to the toilet during the tenancy and after the tenancy. The Landlord provided photos of the inner toilet tank: one dated February 2, 2017 does not show any damage and the other photos, undated, shows a damaged inner pipe. The Landlord stated that the pipe was left damaged at the end of the tenancy and that repairs were made to the toilet during the tenancy. The Landlord claimed the costs of 3 hours of cleaning and provided photos showing very minor misses and the inside of an oven that appears clean. The Landlord claimed the cost of a stove hood filter stating that it was never cleaned. I note that the tenancy was only 6 months and the filter photo does not show damage. The Landlord claimed the replacement costs of fobs but did not replace the fobs. Throughout the provision of evidence for each of the claimed items being claimed I repeatedly considered the Landlord's evidence of damage to be exaggerated or without a ring of truth.

After the hearing, while again considering the Landlord's evidence of the claims and much consideration of the overall tone of the Landlord's evidence I have come to the conclusion that overall the Landlord's evidence given at the hearing was not reliable or trustworthy. As a result I find that none of the claims made by the Landlord can be found to be credible and I dismiss the application in its entirety.

As the Landlord's evidence overall has been found not credible, I cannot accept the Landlord's evidence in relation to the move-out inspection. Noting that the postal evidence indicates that the forwarding of the Tenant's mail from the dispute address expired in June 2017, should the Tenants provide their forwarding address to the Landlord I order the Landlord to then return the security deposit plus zero interest of \$500.00 to the Tenants within 15 days of receipt of the forwarding address. Should the Tenants not provide their forwarding address before January 30, 2018 the Landlord is allowed to retain the security deposit.

Conclusion

The application is dismissed.

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: August 4, 2017

Residential Tenancy Branch