



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested return of double the security, an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, and to recover the filing fee.

The hearing was conducted by teleconference on October 19, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter—Tenant's Evidence

The Landlord confirmed that they did not receive any evidence from the Tenant in support of her application for Dispute Resolution. The Tenant initially claimed that she sent her evidence to the Landlord through "the post office people". When I asked her whether she sent the package by registered mail she confirmed that she had, although she was unable to provide a tracking number. After further discussion, the Tenant conceded that she did not serve her evidence on the Landlord and claimed she was not told to do so and understood all she had to do was send her evidence to the Residential Tenancy Branch.

I do not accept the Tenants' testimony that staff at the Branch told her not to serve her evidence on the Landlord as such information is contrary to the *Residential Tenancy Branch Rules of Procedure* and administrative fairness.

Rules 2.5, 3.1, 3.14 and 3.17 of the *Residential Tenancy Rules of Procedure* provide as follows:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*].

Further, the Tenant received a notice of Dispute Resolution Hearing for her application, and upon which the following is clearly noted:

GENERAL INFORMATION about your responsibility and the hearing

1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.

As the Tenant failed to follow the *Residential Tenancy Branch Rules of Procedure* by failing provide her evidence to the Landlord, I find that considering this evidence would be unfair to the Landlord and would offend the principles of natural justice; I therefore decline to consider the Tenant's evidence which she failed to provide to the Landlord.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit paid?
2. Should the recover the filing fee paid?

Background and Evidence

By Decision dated May 24, 2017, the Landlord was ordered to return the Tenant's security deposit within 15 days of receipt of the Tenant's forwarding address. The presiding Arbitrator specifically noted that "[s]hould the Landlord fail to return the security deposit as required, the Tenant is at liberty to seek return of double the security deposit".

The Tenant testified that she sent a fax to the Landlord's office with her forwarding address on June 2, 2017 as well as the Decision made May 24, 2017. She further testified that after faxing her letter to the Landlord's office, she called and spoke with a person by the name of N. (one of the girls who answers the phone at the Landlord's real estate office) who confirmed that the fax had been received.

The evidence before me is that the Landlord returned \$450.00 to her by letter dated on August 11, 2017. In a letter accompanying the cheque, the Landlord wrote:

"We note that you reference a fax which you say was sent to us including the Decision. We also note that we have not received any instruction from the Residential Tenancy branch as to your security deposit. However, we no longer wish to pursue this any further and accordingly send the deposit to you".

The Tenant confirmed that the \$450.00 was sent to her at the address she provided on her fax to the Landlord.

The Landlord testified as follows. He stated that he did not have any record of the Tenant providing a fax to his office.

The Landlord also stated that, as of the date of the hearing before me, he has not received a copy of the May 24, 2017 Decision from the Residential Tenancy Branch.

The Landlord also stated that he had no idea how his office knew the Tenant's forwarding address.

H.L. also testified. She stated that she has worked for the Landlord for over eight years. She confirmed that she answers the phones and receives faxes on a part time basis. She further confirmed that she was working on June 2, 2017. She was not able to say whether N. was working on June 2, 2017. She claimed that she did not speak to N. about this application or whether the fax was received and further advised that N. was not at the hearing as she was "away sick".

H.L. stated that on August 11, 2017 they received a Notice of Dispute Resolution Hearing from the Tenant and upon receipt of her forwarding address the Landlord sent her security deposit and the letter referenced by the Tenant.

Analysis

After consideration of the testimony before me, and on a balance of probabilities, I find as follows.

I accept the Tenant's testimony that she sent her forwarding address to the Landlord's business address by fax. I further accept that she spoke with one of the Landlord's assistant's, N., who confirmed she had received the fax. Where the Tenant's evidence conflicts with the Landlord's, I accept the Tenant's. The Landlord claimed that he did not receive the fax from the Tenant which contained her forwarding address as well as the Decision. He further claimed he did not receive a copy of the Decision, yet decided to return the deposit. I find it more likely he received the Tenant's fax and the Decision and chose to send the \$450.00 to her, knowing that she may make an application for dispute resolution seeking double.

Section 90 of the *Act* provides that documents sent by fax are deemed received three days later; consequently, I find that the Landlord was in receipt of the Tenant's forwarding address as of June 5, 2017.

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*; as such, and pursuant to section 38(6), the Tenant is entitled to double the deposit.

As the Tenant has been substantially successful, I also award her recovery of the \$100.00 fee for filing this Application.

I find, pursuant to sections 38, 67 and 72 of the *Act*, that the Tenant is entitled to double her security deposit in the amount of \$900.00 in addition to the \$100.00 filing fee for a

total of \$1,000.00. As the Landlord has already returned \$450.00 I find she is entitled to a further \$550.00.

Conclusion

The Tenant is given a formal Monetary Order in the amount of **\$550.00**. This Order must be served on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: November 3, 2017

Residential Tenancy Branch