



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 43 minutes in order to allow both parties to fully present their submissions. I note that the landlord spoke for most of the hearing time and delayed the conference by repeatedly arguing and debating issues with me, as noted below.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

This hearing began at 9:30 a.m. and ended at 10:13 a.m. Throughout the hearing, the landlord continuously yelled at me, interrupted me and became upset by my questions, often arguing and debating issues rather than answering my questions. She also fought with the tenant by making disparaging comments that the tenant was "lying" and had

“no soul.” The hearing was significantly lengthened by the landlord’s behaviour. Despite my repeated warnings to the landlord to stop her behavior, she continued.

I caution the landlord not to engage in the same rude, inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and she may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Preliminary Issue - Previous Hearings and Service of Documents

This matter was previously heard by a different Arbitrator on September 5, 2017 and a decision and monetary order were both issued on September 8, 2017 (“original hearing” and “original decision” and “original monetary order”). Both parties attended the original hearing. The original decision granted the tenant’s entire application for compensation and provided the original monetary order to the tenant for \$2,000.00.

The landlord applied for a review of the original decision and a new review hearing (this current hearing on December 8, 2017) was granted by a different Arbitrator, pursuant to a “review consideration decision,” dated September 25, 2017.

By way of the review consideration decision, the landlord was required to serve the tenant with a copy of the review consideration decision, notice of review hearing, and the written evidence submitted with the review application, within three days of receiving the review consideration decision. The landlord was cautioned to “prove and satisfy the service requirements for these documents at the reconvened hearing” as noted on page 4 of the review consideration decision.

The landlord testified that she did not serve the above required documents to the tenant because she did not know that she had to and she did not read the review consideration decision. The tenant confirmed that she did not receive any documents from the landlord. The tenant said that she contacted the Residential Tenancy Branch (“RTB”) in order to find out why the landlord had not paid the original monetary order issued at the original hearing and she was informed by the RTB that the landlord had filed a review application so the original monetary order was suspended. The tenant stated that the RTB provided her a copy of the review consideration decision and notice of review hearing but not the written evidence submitted with the landlord’s review application. The tenant claimed that she was aware of the written evidence, which the landlord confirmed was a one-page handwritten note signed by both parties during the tenancy.

The tenant stated that she was unaware of the reasons for the landlord's review application because she did not receive a copy of it.

Accordingly, I find that the tenant was sufficiently served for the purposes of the *Act*, with the review consideration decision, the notice of review hearing and the landlord's review application written evidence, as per section 71(2)(c) of the *Act*. Although the landlord did not serve these documents to the tenant, as she was required to do so, the tenant received them from the RTB and during the tenancy and confirmed that she wanted to proceed with the review hearing and obtain finality of this matter.

Preliminary Issue – Review Hearing of One Narrow Aspect

Pursuant to section 82 of the *Act*, I am entitled to conduct a review hearing of the original application based solely on the original record of the original hearing, by reconvening the original hearing or by holding a new hearing.

At the outset of the review hearing, I informed both parties that I would be holding a new hearing to deal with one narrow aspect of the tenant's claim: whether the landlord was entitled to deduct \$200.00 from the tenant's one month free rent compensation of \$700.00, pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property and section 51 of the *Act*.

I informed the parties that I would only be dealing with the one aspect because this was ordered by the Arbitrator in his review consideration decision since the landlord only applied for a review of the original decision based on the one aspect and the landlord did not raise any other issues in her review application.

I read the following three paragraphs aloud to both parties during the hearing and both parties confirmed that this portion was contained in their copy of the review consideration decision at page 3 (my emphasis added):

Therefore, I find the Landlord has established sufficient evidence to suggest the Tenant used fraud to obtain the Decision for the Tenant's \$200.00 award. However, the Tenant was granted an additional \$1,800.00 in monetary compensation and the Landlord has not argued anything in the Review Application pertaining to that relief.

Accordingly, I allow the Landlord's Review Application and order the original hearing be reconvened in order to determine the Tenant's \$200.00

monetary claim only. The Tenant's award for \$1,800.000 is final and that portion will not be re-heard or determined again.

It should be noted that the conclusions I have reached in this Review Consideration Decision have only be made in order to grant a review hearing. However, the reviewing Arbitrator will hear evidence and arguments from both parties on the \$200.00 claim and will then render a final decision based on the evidence provided at that reconvened hearing.

During the hearing, the landlord confirmed that she did not want to proceed with the review hearing unless she could have the entire \$2,000.00 claim re-determined again. I notified her that the Arbitrator had ordered this review hearing on the \$200.00 issue only and that the decision for the \$1,800.00 was final and would not be reheard. The tenant confirmed that she was ready, willing and able to proceed with the hearing on the \$200.00 issue only. The landlord continued to argue the issue with me, insisting that she did not care about the \$200.00 but wanted a rehearing on the entire \$2,000.00. Despite repeated efforts to explain the issue to the landlord, the landlord confirmed that she did not want a review hearing on the \$200.00.

I informed the landlord that if she abandoned her right to a hearing regarding the \$200.00 issue, I would have no choice but to confirm the original decision and original monetary order, granting the tenant the \$200.00 in addition to the \$1,800.00 already decided. The landlord agreed to this and confirmed her understanding of same.

I cautioned the landlord that she had already applied for review consideration once in this proceeding and that under section 79(7) of the *Act*, a party can only apply once in a proceeding for a review. The landlord agreed to this and confirmed her understanding of same.

As advised to the landlord during the hearing, I caution the landlord to review section 79(7) of the *Act*, which states that a party may only apply once for a review consideration:

(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

Analysis

Section 82(3) of the *Act* states:

Following the review, the director may confirm, vary or set aside the original decision or order.

During the hearing, I notified both parties that the original decision and monetary order were confirmed. I informed them that the original decision required the landlord to pay the tenant \$2,000.00 pursuant to the original monetary order. The landlord confirmed that she understood that she had to pay this amount to the tenant and claimed that it was not an issue.

During the hearing, the landlord affirmed, under oath, her correct service address, so that the tenant would be able to locate her in order to enforce the original monetary order.

I confirm the original decision and original monetary order, both dated September 8, 2017.

Conclusion

The original decision and original monetary order, both dated September 8, 2017, are confirmed.

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: December 18, 2017

Residential Tenancy Branch