



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNSD, FFT

Introduction

This 70 minute hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). Corporate Landlord PWRll identified the first three tenants in their application for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for their application from the tenants pursuant to section 72.

The tenants as identified in the last three tenant names outlined above applied against Landlord YM for:

- authorization to obtain a return of double their security and pet damage deposits pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony, to make submissions, to call witnesses and to cross-examine one another.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to a monetary award for loss arising out of this tenancy?

Is the landlord entitled to retain the security and pet damage deposits paid for this tenancy? Are the tenants entitled to a monetary award equivalent to double the value of their security and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover the filing fee for their applications from one another?

Preliminary Matters - Identification of Names of Applicants and Respondents

Landlord WM (the landlord) represented the interests of both landlords in this matter. The landlord said that Landlord YM was an individual who had only occasionally handled matters with the tenants as an agent. As Landlord YM is travelling overseas, the landlord said that any application submitted by the tenants should identify the Corporate Landlord PWRIL, the landlord who signed the tenancy agreement with the tenants, as the landlord.

From the commencement of this hearing, the landlord maintained that some of the tenants were concealing the correct spelling of their names in an attempt to avoid responsibility for the damage caused to this rental unit. As this was clearly an issue for the landlord and I did have some difficulty understanding some of the testimony from the parties as English is not their first language, I have identified the spelling of the tenants' names as the parties presented them in their respective applications. There were only three tenants named in each set of applications; the first three are the names as identified in the landlord's application; the second three are the same tenants as identified in the tenants' application.

Preliminary Issue -Service of Documents

The landlord testified that he first received an address from all three tenants on June 5, 2018. after the tenants vacated the rental unit on May 5, 2018. The landlord testified that he sent all three tenants individual copies of the dispute resolution hearing package and written evidence by registered mail on June 7, 2018. He provided the Canada Post Tracking Numbers for these registered mailings and gave undisputed sworn testimony that the tenants signed for delivery of these packages on June 12, 2018.

Tenant SL (the tenant) testified that each of these packages contained different information; one of the packages had six pages, another had ten pages. The tenant testified that the packages contained no written evidence and that the landlord has not sent them any written evidence for this hearing. The landlord denied this allegation,

maintaining that each of the registered mailings contained a complete set of dispute resolution hearing materials as well as the landlord's written evidence.

The tenant testified that on June 10, 2018, the tenants sent the landlord a copy of their dispute resolution hearing and written evidence package by registered mail. The tenant testified that they sent this package to Landlord YM at the dispute address as YM was the only person they had been dealing with and that the landlord had never provided the tenants with another address during the course of this tenancy. The tenant said that this package was returned to the tenants as unclaimed on July 4, 2018.

The landlord said that the tenants have not sent the hearing package to the landlord named in the Residential Tenancy Agreement (the Agreement) the parties signed on October 20, 2017 and that he was unaware of the tenants' application and the tenants' written evidence. The landlord testified that the tenants knew the address where he could be contacted because they had met with him there in October 2017, prior to the commencement of this tenancy, and again in February 2018. He maintained that the tenants knew fully where he could be contacted as he had provided this information to them. The landlord did not deny that no address for contacting the landlord was included in the Agreement, a requirement of the *Act*.

The tenant said that the landlord gave the tenants the wrong address in October 2017, but met them nearby when they contacted him.

Analysis - Preliminary Issue - Service of Documents

Both parties submitted considerable written evidence, which they were expecting to have considered as part of their applications for significant monetary awards. The landlord applied for a monetary award of \$10,750.00, while the tenants sought \$4,800.00 in their application.

In order to consider applications for such significant monetary awards, it is important that both parties have had an opportunity to review the other party's application and the evidence that the other party has presented so as to be able to respond to the case against them. Separate from the requirements of sections 88 and 89 of the *Act*, this is a fundamental component of the legal principle of natural justice.

The landlord failed to include an address in the Agreement where the landlord could be contacted if there were problems that required the attention of the landlord during this tenancy. Despite this deficiency, I am satisfied that the tenants did have a way of

contacting the landlord during the course of this tenancy, knew who the landlord was, and had been provided with an address where the landlord could have been served with a copy of the tenants' dispute resolution hearing package and written evidence. As that has not occurred and the landlord was unaware of the substance of the tenants' cross application, I find that the tenants have not met the requirements of sections 88 or 89(1) of the *Act* in serving the landlord with their dispute resolution hearing package and written evidence to the Corporate Landlord named on their Agreement and at an address he had provided to them. For these reasons, I dismiss the tenants' application with leave to reapply.

Turning to the landlord's application, I find that the tenants have raised sufficient questions regarding the service of the materials presented to them in the registered mail packages sent to them by the landlord. I am not satisfied that the landlord has provided each of the tenants with a complete dispute resolution hearing package as required by section 89(1) of the *Act*. I am also not satisfied that the landlord has met the requirements of section 88 of the *Act* by adequately addressing the tenants' claim that he failed to include his written evidence in those packages sent to the tenants by registered mail. Under these circumstances and as it would be important to ensure that all materials associated with these respective applications are properly served to one another in their entirety, I also dismiss the landlord's application for dispute resolution with leave to reapply.

Conclusion

Both applications for dispute resolution are dismissed with leave to reapply.

In the event that the parties decide to reapply for dispute resolution, they will be required to resubmit all written evidence upon which they intend to rely to each other again. They will also need to place their written evidence on the Residential Tenancy Branch's online Service Portal again.

The tenants can be served at the mailing address where the landlord sent the June 2018 dispute resolution hearing package. Since the landlord's Vancouver address is under construction, the landlord agreed that documents sent to the Corporate Landlord, the name identified on the tenancy agreement, at the address of the rental unit would be the best address where the landlord can be served with any new dispute resolution hearing package or written evidence by the tenants.

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: July 17, 2018

Residential Tenancy Branch