



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute codes MNR MNDC MNSD FF

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the tenant for review of a decision dated August 9, 2018. In the original decision, the landlord was granted a monetary order in the amount of \$925.00 after allowing the landlord to offset the \$825.00 security deposit in partial satisfaction of the full monetary award of \$1750.00. The original decision and orders were subsequently suspended by way of a review consideration decision dated August 23, 2018 pending the outcome of this review hearing.

The tenant's review application was granted on the ground that she had not been served with the landlord's original application for dispute resolution and Notice of Hearing.

The landlord acknowledged receipt of the tenant's review application, review consideration decision and notice of review hearing. The tenant testified that she did not receive any evidence or application from the landlord. The landlord testified that he did not reserve the tenant with his application as the first one he sent back when he filed his original application was returned to him by Canada Post marked as recipient/address "moved/unknown". The landlord submitted a copy of the registered mail receipt, tracking number (RN 288 768 904 CA) and pictures of the returned envelope. A search of Canada Post's delivery tracking system shows the item was out for delivery on January 9, 2018, delivery was attempted but the recipient was not located at the address and the item was then returned to the sender.

Based on the above evidence, I find the tenant to be deemed served with the Landlord's original Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act.

In addition to registered mail evidence, the landlord submitted some additional documentary evidence for this review hearing which was not originally served to the

tenant or provided on file for the original hearing. The additional documentary evidence was all documents originally provided to the landlord by the tenant and also included in the tenant's evidence so the tenant was not prejudiced by not being provided a copy.

Issues

Should the original decision and order dated August 09, 2018 be confirmed, varied or set aside?

Background and Evidence

The tenancy began on July 24, 2016 with a monthly rent of \$1650.00 payable on the 1st day of each month. The tenant paid a security deposit of \$875.00 at the start of the tenancy which the landlord continues to hold. The tenant vacated the rental unit on December 31, 2017.

The landlord is claiming loss of rent in the amount of \$1650.00 for the month of January 2018. The landlord submits that the tenant did not provide adequate notice to end the tenancy and only notified the landlord by way of a breach letter on December 27, 2017 that she would end the tenancy by December 31, 2017 if the landlord did not correct issues identified in the letter. The tenant was requesting the landlord provide proof of a permit for the installation of a gas fireplace and was also requesting that it be done by a certified installer. The landlord submits that the 4 day timeline was not reasonable to obtain a permit. The landlord testified he suffered a loss of rent for January 2018 and was able to re-rent the unit for February 2018.

The tenant testified that lack of adequate heat was an ongoing issue since the beginning of her tenancy. The tenant issued the landlord a breach letter on December 27, 2017 as she had safety concerns with a gas fireplace installed by the landlord. The tenant submits that she could smell gas and felt nauseous. The tenant was concerned the landlord did not have permits or that the work was not done by a certified installer. The tenant testified that in response to her notifying the landlord of the gas smell, the landlord turned off the gas on December 22, 2017. The tenant testified that she vacated on December 31, 2017 as the landlord had not corrected the breach.

Analysis

The tenant's review application was granted on the ground that she was not served with the landlord's original application and notice of hearing. The landlord has submitted

evidence in support of the tenant being served with the landlord's original application package by registered mail and I accept this evidence and find the tenant was deemed served as per section 89 & 90 of the Act.

As the tenant was properly served with the landlord's original application and notice of hearing, I confirm the original decision and order dated August 9, 2018.

In either event, I find the tenant's breach letter of December 27, 2017 did not provide the landlord with adequate time to correct the breach. As per the tenant's own testimony, the landlord had turned the gas off as of December 22, 2017 (before the issuance of the breach letter); therefore, I do not accept the tenant's claim that she had to vacate the rental unit with only 4 days' notice due to safety concerns.

Conclusion

The original decision and order dated August 9, 2018 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: October 11, 2018

Residential Tenancy Branch