



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (“the Act”) for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38 of the Act;
- a monetary order for compensation for damage or monetary loss under the Act, *Residential Tenancy Regulation* (“Regulation”) or tenancy agreement, pursuant to section 67 of the Act; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The applicant appeared at the hearing. An agent appeared for the respondent “AL”. The agent will, for the purpose of this hearing, be identified as “the agent” or “CN”. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and /or arguments are reproduced here. I refer only to the relevant facts and issues in this decision. The principal aspects of the applicant’s claims and my findings are set out below.

Preliminary Issue – Service of the Tenant’s Application for Dispute Resolution hearing package to the Landlord “ZM”

The applicant testified that she served the Tenants’ Application for Dispute Resolution hearing package (“dispute resolution hearing package”), along with her evidence, to the respondent ZM by way of registered mail. The applicant testified that she did not have in her possession a Canada Post registered mail slip or transaction receipt, both of which would have included a tracking number associated with the purported registered mail item. The applicant testified that she had lost her wallet, and that the Canada Post transaction receipt depicting the purchase of the registered mail service was in the wallet, and that the receipt was now lost.

The applicant asserted that she provided a copy of the returned envelope which was addressed to the respondent ZM. The envelope does not depict that the mailed item was a Canada Post registered mail item. The mailed item does not include a tracking number and does not present in the manner associated with a Canada Post registered mail item, or any mailing service provided by Canada Post which includes a tracking number which would permit confirmation of delivery to a named person, such that the mailing would adhere to the criteria for “registered mail” as defined in section 1 of the Act.

Rather, the copy of the returned envelope which was addressed to the respondent ZM presents as regular mail service provided by Canada Post.

The applicant did not provide any evidence, such as a Canada Post tracking slip, tracking number, or transaction receipt to prove that the respondent ZM was served with the dispute resolution hearing package in a manner that would satisfy service by registered mail as defined under the Act. Therefore, I notified the applicant that since she did not serve the respondent ZM in accordance with section 89 of the Act, which requires service by registered mail and a signature, her application was dismissed with leave to reapply. I notified her that if she wished to pursue her claims against the respondent ZM, she would have to file a new application and pay a new filing fee.

Based on the foregoing, the applicant’s application against the respondent ZM is dismissed in its entirety, with leave to reapply.

Preliminary Issue – Does a tenancy exist between the applicant and the respondent “AL” or AL’s agent “CN”?

The respondent AL was represented by her agent “CN”. The agent CN testified that he was not served with the applicant’s dispute resolution hearing package. The agent CN testified that he is the son of the respondent AL, and that AL received an automated email message from the Residential Tenancy Branch (RTB) which alerted her to the hearing, and the details for participating in the hearing.

Although not served in accordance with the Act, CN wished to participate in the hearing to provide testimony to illustrate that no tenancy exists, either expressly or tacitly, between AL and the applicant.

The agent CN testified that his mother, AL, owns the single detached house in which the subject rental unit is located. The subject rental unit in which the applicant resided is the upper unit of the house and a separate unit is located in the lower portion of the house. CN stated that he entered into a tenancy with ZM (the second named respondent) whereby ZM rented the entire house and was given permission to sublet units within the house. CN provided a copy of a tenancy agreement which depicts his tenancy with ZM. The tenancy agreement includes an addendum which states that ZM has consent to sublet the property which comprises the rental unit.

CN testified that ZM chose to occupy the lower unit and sublet the upper unit. CN testified that the responsibility of finding a sub-tenant, and subsequently being liable for the sub-tenant, rested solely with ZM, and that neither CN nor AL ever had any contact with any of ZM’s sub-tenants.

CN asserted that ZM would pay his rent by way of email transfer to the account of AL, and that the account was set to automatically deposit the funds after the email message was accepted. CN testified that ZM’s email transfers had a limit, and that in the past, ZM would send email transfers from different addresses which would total the sum of rent due, and that CN and AL understood those payments, though being from different email addresses, originated from ZM as payment of rent owed under ZM’s tenancy.

CN testified that he never entered into a tenancy with the applicant. CN referred to the applicant’s tenancy agreement (which was entered into evidence), which clearly depicts that the applicant entered into a tenancy with ZM being her landlord.

The applicant testified that she was directed by ZM to send her rent to an email address provided by ZM, which happened to be AL's email address. The applicant therefore asserted that AL should therefore be considered her landlord.

CN asserted that the applicant's tenancy with ZM began in October 2018 and ended when the applicant vacated on November 02, 2018. CN asserted that neither he nor AL asked the applicant to send payment to AL's account. CN further asserted that when he had subsequent discussions with ZM, ZM confirmed that the payment sent from the applicant's account was rent owed by ZM, and therefore, both AL and CN accepted that the payment originating from the applicant's email account fit the pattern of ZM providing his own rent payment via different email transfers originating from various email addresses.

CN testified that he never had any communication with the applicant, or even knowledge of her being a sub-tenant of ZM until the applicant obtained CN's telephone number and initiating contact with him on October 25, 2018 for the purpose of conveying that ZM had assaulted her. CN testified that even then, he did not expressly or tacitly convey anything that would allude to his acceptance of the applicant as his own tenant.

CN further testified by referring to email exchanges between him and ZM, which were submitted as evidence, in which ZM conveys to CN that CN is not responsible for anything that happened between ZM and the applicant.

Based on the respective testimony and evidence provided by both the applicant and CN, I find, on a balance of probabilities, that a tenancy did not exist between the applicant and CN or AL. There is no evidence that the parties either expressly or tacitly entered into a tenancy.

The one-time payment made by the applicant to the email address belonging to AL cannot be construed as the applicant's intention to provide payment directly to AL for the purpose of entering into a tenancy with AL, since the applicant provided the payment at the direction of ZM in satisfaction of her rent owed to ZM. Furthermore, the arrangement of the payment was done without the prior consent or knowledge of either AL or CN, and when CN subsequently communicated with ZM, he was led to believe that the email transfer payment was for the purpose of ZM providing his rent. Additionally, at this point, neither CN nor AL had any knowledge of the applicant.

Based on the foregoing, I dismiss the applicant's application against the respondent AL, and find that no tenancy exists between the parties.

Conclusion

The applicant's application against the respondent AL is dismissed in its entirety without leave to reapply.

The applicant's application against the respondent ZM is dismissed in its entirety, with leave to reapply.

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: March 08, 2019

Residential Tenancy Branch