



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 1, 2019. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence in person (via courier) on May 8, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the landlord was incorrectly named by the tenant for recovery of the security deposit and compensation. The named landlord has argued that the new landlord/buyer should be the respondent in the tenant's application. The named respondent cites section 93 of the Act which states in part that the obligations of the Landlord pass with the transfer or assignment of the Land to the Purchaser. The named landlord has argued that the Contract of Purchase and Sale with the Statement of Adjustment shows that the completion date was November 30, 2018 and possession of the rental property for the purchaser was on December 1, 2018. The named landlord also stated that the Statement of Adjustment shows that the buyer was credited with \$1,200.00 for the security deposit. The tenant confirmed that that she vacated the rental unit on November 29, 2018 and returned possession of the rental unit on

December 1, 2018 by meeting the named landlord and giving him the keys to the rental unit. I find that possession of the rental unit was returned to the landlord on December 1, 2018 and in reviewing the landlord's documentary evidence, "The Contract of Purchase & Sale with the Statement of Adjustment shows that the Completion Date was November 30, 2018 and Possession Date for the new Buyers was December 1, 2018. Statement of Adjustment shows new Buyer credited \$1200 for security deposit. On this basis, I find that the tenant has named the incorrect landlord for return of the security deposit. I caution the tenant that section 38 applies in how a security deposit is returned. This portion of the application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods.

On the tenant's second request for compensation of \$7,200.00 in complying for an end of tenancy, the named landlord has also disputed that the tenant has incorrectly named the wrong landlord. The landlord claims that he was only relaying information from the buyer to the tenant and providing the buyers contact information to the tenant to facilitate the offer to end tenancy. The tenant argues that she did not receive the buyer's contact information from the landlord and assumed that the landlord would provide the compensation as all of her communications were with him.

The tenant has referred to the landlord's evidence submission, an email dated October 8, 2018 from the Buyer's Agent to the named Landlord. It states in part *"We cannot leave our offer open-ended without an expiry time. Please let the owner of 201, 202, 301 know that we will honor our agreement (as per our email of September 25, 2018) until Wednesday, October 10, 2018. After that time we will not be able to offer his tenants what we did below. Once we take ownership, we will be forced to follow the exact rules of the Residential Tenancy Act which means they would get 1 months rent, full requirement to clean their suite, etc."*

A review of the submitted evidence also shows another email submitted by the landlord (with no date). It appears to be an email from dragon69@hotmail.com which states in part the Buyer's offer which is:

- 1) *The payment of 3 months rent (ie 3 times what is required by law)*
- 2) *No need for them to clean their suites (a requirement)*

- 3) *They can have their security deposits returned immediately at move-out (ie. Not having to wait the 15 days as per the RTA)*
- 4) *If they agree to vacate, we can let them stay for free until December 10 which gives them an easier transition into a new place less expensive to hire movers, etc.)*

It is followed by:

If they are willing to proceed, they would simply need to sign a Mutual Agreement to End Tenancy (recommended by the Residential Board) –see ...if easier, we can fill out the 3 forms for the owner.

How will the tenants know that they will receive the 3 months rent from us? We will provide them (and the owner) with a signed

The landlord has also submitted a series of text messages between the tenant and landlord which states in part,

Hi Davy, can you confirm the offering from the new buyers? My understanding from our conversation is 3 mo rent paid to us as compensation, security deposit paid upon move out(w/out exit report) and grace move out period from Dec 1-10 free of rent. Is that correct?

A response was,

Yup...and don't need to clean unit

In reviewing the tenant and landlord's submissions, I find that the tenant has incorrectly named the landlord for the return of the security deposit. As confirmed by both parties, possession of the rental unit was returned by the tenant on December 1, 2018 when the keys were returned after vacating the rental unit on November 28, 2018. The submitted documentary evidence by the landlord shows the possession date for the buyer took place on December 1, 2018. The Statement of Adjustment provides for \$1,200.00 being debited to the Purchaser for a security deposit. I also find that the tenant has incorrectly named the landlord for compensation of \$7,200.00. The tenant argued that she assumed that the named landlord would provide the compensation to the tenant even though she was not sure who offer of compensation was from. A review of the landlord's submitted evidence (highlighted in bold above) clearly shows a text message

from the tenant to the named landlord to confirm the offer from the new buyers. I find that this in conjunction with the other documentary evidence filed by the landlord that the tenant has incorrectly named the landlord for compensation. On this basis, the second portion of the tenant's monetary claim is also dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods..

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: May 23, 2019

Residential Tenancy Branch