



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 27, 2018 (the “Application”). The Landlord sought compensation for damage caused to the unit, to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

This matter came before me for a hearing April 16, 2019 and an Interim Decision was issued April 17, 2019. This decision should be read with the Interim Decision.

The Landlord appeared at the hearing. The Tenant appeared with Legal Counsel, his wife and his son. The Tenant’s son exited the conference call until required. The Landlord and Tenant provided affirmed testimony.

Preliminary Issues

The Landlord had not submitted a Monetary Order Worksheet prior to the first hearing. He had submitted a two-page word document outlining his submissions and an outline of amounts sought. The amounts outlined in the two-page word document did not match the amount sought on the Application.

At the first hearing, Legal Counsel advised that he did not have the two-page word document or any breakdown of the amounts the Landlord was claiming for. I asked the Landlord if he provided the Tenant with the amounts he was seeking and he advised he did so on the Notice of Dispute. The Application includes the total amount the Landlord is seeking, but not a breakdown of amounts. As noted in the Interim Decision, it was agreed at the first hearing that we would proceed.

The first hearing did not conclude in the allotted time and was adjourned. I stated the following in the Interim Decision:

The Landlord must serve the two-page word document outlining the Landlord's submissions and amounts being sought on the Tenant as soon as possible. The Tenant is to be served through Legal Counsel at the email address or address noted on the front page of this decision.

The Landlord must submit a Monetary Order Worksheet outlining the exact amounts being sought for each item/issue to show what amounts are being sought and how they add up to the \$34,350.00 listed in the Application. This must be served on the Tenant as soon as possible. The Tenant is to be served through Legal Counsel. The Landlord is not permitted to add items or issues to the claim.

...

Both parties are permitted to submit further evidence if it is new evidence that arises from the above issues with service. The parties are not permitted to submit further evidence that should have been submitted prior to the first hearing date. Any further evidence submitted must be served on the other party in accordance with the Residential Tenancy Act and Rules of Procedure.

At this hearing, Legal Counsel advised that he had not received the two-page word document or Monetary Order Worksheet. The Landlord testified that he sent these to Legal Counsel by regular mail to the law firm address on the Interim Decision. He testified that he did this around May 27, 2019. The Landlord had not submitted evidence of service.

It is the Landlord who has the onus to prove he served the necessary documents on the Tenant as required.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their position.

The Landlord testified that he served the two-page word document and Monetary Order Worksheet on Legal Counsel for the Tenant. Legal Counsel for the Tenant states that he never received these. There is no evidence before me in support of the Landlord's

testimony. Therefore, I am not satisfied the Landlord has met his burden to prove he served the necessary documents as required.

I asked Legal Counsel what remedy he was seeking. Legal Counsel asked that the Application be dismissed. He submitted that this hearing has been costly and problematic for the Tenant to attend twice now and stated that the Tenant does not want to adjourn the proceedings again. He submitted that the Landlord has failed to follow the clear direction in the Interim Decision and took issue with the timing and method of service used.

I asked the Landlord for his position on Legal Counsel's request that the Application be dismissed. He said that I have the necessary documents. He said it would not be fair to him to dismiss the Application. He talked about the tenancy agreements in this matter and said he sent a response to Legal Counsel.

Section 59(2) of the *Residential Tenancy Act* (the "Act") states:

(2) An application for dispute resolution must

(a) be in the applicable approved form,

(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and

(c) be accompanied by the fee prescribed in the regulations.

[emphasis added]

Applicants must provide full particulars of the dispute so that respondents understand the claim being made against them and have a fair opportunity to respond to it. For monetary claims, providing full particulars means providing a breakdown of the amounts of compensation being sought for each issue raised.

I agreed that the Application should be dismissed given the lack of particulars provided to the Tenant in relation to the amounts of compensation being sought for each issue raised.

The Landlord should have submitted a Monetary Order Worksheet or equivalent breakdown of amounts being sought prior to the first hearing. The two-page word document was not sufficient as it outlined amounts that exceeded the amount sought in the Application and exceeded the RTB limit as noted in the Interim Decision. This does not assist in understanding the claim. Further, I was not satisfied the two-page document was provided to the Tenant.

The Landlord was directed to serve the two-page word document and Monetary Order Worksheet on Legal Counsel for the Tenant in the Interim Decision. This was made clear to the Landlord. Further, the Landlord was permitted to submit further evidence and in fact did submit further evidence. However, the Landlord did not submit evidence of service and failed to satisfy me that he complied with the directions given in the Interim Decision.

In my view, it would be prejudicial to the Tenant to proceed with a second hearing on this matter when the Tenant has not yet received any breakdown of the amounts the Landlord is claiming. It is irrelevant that I have these documents as I am not the person answering the claim, the Tenant is. I do not agree that it would be unfair to the Landlord to dismiss the Application as the Landlord failed to comply with the *Act* in relation to providing full particulars of the claim and failed to satisfy me that he complied with the directions in the Interim Decision. I do find it would be unfair to the Tenant to proceed in these circumstances.

I advised the parties of my decision at which point Legal Counsel asked about fines and about return of the security deposit.

Security Deposit

Policy Guideline 17 deals with security deposits and states at page two:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit,

as applicable, whether or not the tenant has applied for dispute resolution for its return.

Given Policy Guideline 17, I determined it was appropriate to deal with the security deposit issue raised in the Application.

There was no issue that there was a tenancy agreement between the parties in relation to the rental unit or that the Tenant paid a security deposit.

The Tenant testified that he wrote down his forwarding address for the Landlord on November 30, 2018. The Tenant did not point to evidence in support of his position when asked. The Tenant's position was that he did not participate in the move-out inspection because he was denied access to do the inspection with the Landlord.

The Landlord denied that the Tenant provided his forwarding address in writing on November 30, 2018 and said he obtained the Tenant's address by following him when he was moving his belongings.

Legal Counsel pointed out that the Landlord knows where the Tenant lives.

Sections 38 and 39 of the *Act* state:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[emphasis added]

I am not satisfied the Tenant provided his forwarding address to the Landlord in writing on November 30, 2018 as the Landlord denied this and the Tenant could not point to any evidence in support of his testimony on this point.

The Tenant was required to provide his forwarding address in writing to the Landlord at the end of the tenancy under sections 38 and 39 of the *Act*. It is not sufficient that the Landlord knows where the Tenant lives through other means.

I find that section 38 of the *Act* has not yet been triggered as I am not satisfied the Tenant provided the Landlord with his forwarding address in writing. Therefore, I decline to order the return of the security deposit at this point. The Tenant must provide the Landlord with a current forwarding address in writing if he wishes to obtain the security deposit. The Landlord will then have 15 days from receipt of the forwarding address to comply with the *Act*.

Conclusion

The Application is dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Tenant is not entitled to return of the security deposit at this point. The Tenant must provide the Landlord with a current forwarding address in writing if he wishes to obtain the security deposit. The Landlord will then have 15 days from receipt of the forwarding address to comply with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 17, 2019

Residential Tenancy Branch