Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking:

- A monetary order in the amount of $1,850.00 for double the amount of their security deposit.

The hearing was convened by telephone conference call and was attended by the Tenant and their advocate (the "Advocate"), both of whom provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant and Advocate stated that the Notice of Dispute Resolution Proceeding and the documentary evidence before me for review, were served on the Landlord at the rental unit address. The Tenant and Advocate stated that this is the correct address for service for the Landlord as the Landlord ended the tenancy pursuant to section 49 of the *Act* in order to reoccupy the rental unit themselves. The Tenant stated that the Landlord served them with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), because they and their family were moving into the rental unit, that they disputed the Two Month Notice, and that an Arbitrator subsequently ended the tenancy on October 31, 2018, based on the Two Month Notice.

The Tenant provided me with the file number for the previous dispute and I reviewed that decision, which forms part of the Residential Tenancy Branch (the "Branch") records. I note that in that decision, the Arbitrator stated, "The Landlord testified that he and his family are going to move into the rental unit once the Tenant vacates." The

Arbitrator further stated “I accept the testimony of the Landlord that he and his family are going to move into the rental unit. There is nothing before me that causes me to question the Landlord’s testimony on this point.” The Arbitrator then upheld the Two Month Notice, ended the tenancy effective October 31, 2018, and granted the Landlord an Order of Possession for the rental unit for October 31, 2018.

As a result of the above, I am satisfied that the rental unit address would have, at that time the tenancy ended or shortly thereafter, constituted an address at which the Landlord resided for the purpose of sections 88 and 89 of the *Act*. Despite that finding, I advised the Tenant that it has been 17 months since the tenancy ended, and asked how the Tenant knew that the Landlord still resided at the rental unit address. The Tenant stated that on January 3, 2020, they went to the rental unit address, opened the exterior mailbox and verified that mail in the Landlord’s name was still being sent to that address. The Tenant stated that they also observed the Landlord’s truck at the property. Further to this, the Tenant stated that they still live on the same street as the rental unit and regularly sees the Landlord on the street and at the rental unit, and as a result, they know that the Landlord still resides there.

I am satisfied, based on the affirmed and undisputed testimony of the Tenant, and the previous finding of the Arbitrator in the decision dated September 28, 2018, that the rental unit is currently an address at which the Landlord resides and/or carries on business as a Landlord, pursuant to sections 88 and 89 of the *Act*. Having made this finding, I will now turn my mind to whether the Landlord was properly served at that address in accordance with the *Act*.

The Tenant and Advocate testified that the Notice of Dispute Resolution Proceeding package, including a copy of the Application and notice of the hearing, were sent to the Landlord by registered mail on January 3, 2020, at the rental unit address. The Tenant and Advocate provided me with the registered mail tracking number and the Canada Post tracking website confirms that the registered mail was sent as described above. However, the tracking website also shows that the item was out for delivery on January 10, 2020, that delivery was delayed on January 13, 2020, due to extreme weather, and then provides no further updates. As a result, I advised the Tenant and Advocate that I was not satisfied that this mail had in fact ever been delivered to the Landlord or that the Landlord was ever notified by Canada Post that this mail was available for them to pick-up.

The Tenant and Advocate stated that a subsequent registered mail package was sent to the Landlord on January 16, 2020, which included the Notice of Dispute Resolution

Proceeding, including a copy of the Application and notice of the hearing, all of the Tenant's documentary evidence, as well as a copy of an Amendment to the Application for Dispute Resolution (the "Amendment"), wherein the Tenant updated their address for service. The Tenant and Advocate provided me with the registered mail tracking number and the Canada Post tracking website confirms that the registered mail was sent as described above. The tracking website also shows that notice cards were left for the Landlord on January 20, 2020, and January 27, 2020, and that when the item went unclaimed, it was ultimately returned to sender on February 12, 2020.

The Tenant and Advocate stated that the Landlord routinely avoids service and that the Landlord should be deemed to have received the registered mail 5 days after it was sent in accordance with section 90 of the *Act*.

Section 90 (a) of the *Act* states that a document given or served in accordance with section 88 or 89, unless earlier received, is deemed to be received on the 5th day after it is mailed. Residential Tenancy Policy Guideline (the "Policy Guideline") 12 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision and that where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

As stated above, I am satisfied that the rental unit address to which the registered mail was sent constitutes a valid address for service for the Landlord. Based on the undisputed testimony of the Tenant and Advocate, as well as the documentary evidence before me for review, I am satisfied that the Landlord deliberately failed to pick-up the registered mail. As a result, I find that the Notice of Dispute Resolution Proceeding package, including a copy of the Application and notice of the hearing, all the Tenant's documentary evidence, as well as a copy of an Amendment, were deemed served on the Landlord on January 21, 2020, five days after they were sent by registered mail. I therefore accepted the Tenant's Application, documentary evidence and Amendment for consideration in this matter and proceeded with the hearing accordingly.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the Tenant and Advocate, copies of the decision and any orders issued in the Tenant's favor will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Amendment

As stated above, I find that the Landlord was deemed served with the Amendment updating the Tenant's address for service on January 21, 2020. I have amended the Tenant's address for service accordingly.

Res Judicata

On September 28, 2018 an Arbitrator dismissed the Tenant's Application seeking cancellation of a Two Month Notice and granted the Landlord an Order of Possession for the rental unit effective October 31, 2018. In this decision the Arbitrator did not deal with the return of the Tenant's security deposit or authorize the Landlord to withhold any amount from the Tenant's security deposit.

The Tenant subsequently filed an Application on December 6, 2018, seeking the return of their security deposit, among other things. In a decision rendered on March 28, 2019, an Arbitrator dismissed the Tenant's Application seeking the return of their security deposit, with leave to reapply.

As a result, and in the absence of any evidence to the contrary, I find that the matter of the Tenant's security deposit has not previously been decided by the Branch and I therefore have authority to decide this matter.

Definition of a Landlord

The respondent listed as the landlord in this Application is different than the respondent listed as the landlord in the other Applications submitted by the Tenant to the Branch in relation to this tenancy, as referenced by the Tenant in this hearing and discussed above. However, the *Act* defines a landlord as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.

The Tenant stated that the respondent is either the owner of the rental unit, or a person who exercises powers and performs duties under the *Act*, the tenancy agreement or a service agreement, and I note that the One Month Notice referenced above was served

and signed by the respondent. As a result, I find that the respondent meets the definition of a landlord under the *Act* and I have therefore referred to them as the "Landlord" throughout this decision.

Issue(s) to be Decided

Is the Tenant entitled to $1,850.00 for the return of double the amount of their security deposit?

Background and Evidence

The Tenant stated that there was a verbal tenancy agreement in place with the Landlord, that rent in the amount of $1,850.00 was due on the first day of each month at the start of the tenancy, which was later lowered to $1,650.00, and that they paid a security deposit in the amount of $925.00, which the Landlord still holds. In support of this testimony, the Tenant provided me with two rent receipts in the amount of $1,850.00 and a receipt in the amount of $925.00 for payment of the security deposit.

The Tenant stated that they vacated the rental unit October 31, 2018, in compliance with the decision from the Branch dated September 28, 2020, and the subsequent Order of Possession. The Tenant stated that they placed the key for the rental unit and written confirmation of their forwarding address in an envelope and left it in the mailbox for the rental unit on October 31, 2018. In support of this testimony, the Tenant provided me with photographs of their written notice with a key and an envelope in a mailbox, as well as a copy of a text message to the Landlord or their agent dated October 31, 2020, in which the Tenant advised them that the key and their forwarding address had been left in the mailbox for the rental unit and requesting that their security deposit be returned to them at the forwarding address.

The Advocate also provided me with a copy of a letter to the Landlord or the agent dated December 27, 2019, advising them that the Tenant had previously provided them with their forwarding address in writing on several occasions and requesting that the Tenant be returned $1,850.00, double the amount of their security deposit. Although the Letter states that the Tenant provided their forwarding address to the Landlord in writing on October 31, 2019 and again on December 6, 2019, the Advocate stated that this was a typographical error and should have read October 31, 2018, and December 6, 2018. The Advocate also stated that the Tenant's forwarding address was provided to the Landlord on December 6, 2018, as part of the Notice of Dispute Resolution Proceeding

package for the Tenant's Application filed on December 6, 2018, seeking the return of their security deposit, among other things.

The Tenant and the Advocate stated that the Landlord never did a move-in condition inspection or completed a move-in condition inspection report as required by the *Act* and the regulations and that there was no agreement for the Landlord to withhold any portion of the Tenant's security deposit. As a result, the Tenant requested the return of $1,850.00, double the amount of their security deposit, pursuant to section 38 (6) of the *Act*.

Analysis

Although an arbitrator already found in the aforementioned decision dated March 28, 2019, that the Landlord was not considered sufficiently served with the Tenant's forwarding address for the purpose of that hearing on December 6, 2018, when they were served with the forwarding address as part of the Notice of Dispute Resolution Proceeding package, that arbitrator made no findings of fact in relation to service of the Tenant's forwarding address at any other time. As a result, I find that it is open to me to make finding of fact based on any other service date.

Based on the documentary evidence before me and the uncontested and affirmed testimony of the Tenant, I am satisfied that the Tenancy ended on October 31, 2018, and that the Tenant left their forwarding address in writing for the Landlord or their agent in the mailbox for the rental unit on October 31, 2018, and that the Landlord or their agent were advised by text message on the same date that this had been done. I have already found above that the rental unit constituted an address for service for the Landlord on, or shortly after, the Tenant vacated the rental unit on October 31, 2018, and as a result, I find that the Landlord was deemed served with the Tenant's forwarding address in writing on November 3, 2018, three days after it was left in the mailbox pursuant to sections 88 (f) and 90 (d) of the *Act*.

Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4) (a), of the *Act*, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit

The Tenant testified that the Landlord was not entitled to withhold any portion of their security deposit pursuant to section 38 (4) of the *Act*, and there is no evidence before me that the Landlord was entitled to withhold any portion of the Tenant's security deposit pursuant to section 38 (3) of the *Act* or that the Landlord filed an Application in relation to the Tenant's security deposit after the end of the Tenancy. As a result, I find that the Landlord was obligated to return the Tenant's security deposit to them, in full, on or before November 18, 2018, 15 days after they were deemed to have received the Tenant's forwarding address in writing.

I am satisfied based on the uncontested and affirmed testimony of the Tenant and the documentary evidence before me that the Tenant paid a security deposit in the amount of $925.00 to the Landlord, none of which has been returned to them. Section 38 (6) of the *Act* states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Although this Application was filed more than one year after the end of the tenancy, and section 39 of the *Act* states that a landlord may keep a tenant's security deposit if the tenant does not give the landlord a forwarding address in writing within one year after the end of the tenancy, as I have already found above that the Landlord was deemed to have received the Tenant's forwarding address in writing on November 3, 2018, I find that section 39 of the *Act* does not apply.

Based on the above, I find that the Tenant is entitled to compensation from the Landlord in the amount of $1,850.00, double the amount of their $925.00 security deposit. No interest is payable under the regulations.

The Tenant is therefore provided with the attached Monetary Order in the amount of $1,850.00, pursuant to section 67 of the *Act*.

Conclusion

The Tenant's Application seeking $1,850.00 for double the amount of their security deposit is granted.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of $1,850.00. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 22, 2020

Residential Tenancy Branch