Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANDMARK LORD STREET HOLDINGS (G.P.) LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT; MNSDS-DR, FFT; MNSDS-DR, FFT; MNSDS-DR, FFT

Introduction

This hearing dealt with the tenants' four applications pursuant to the *Residential Tenancy Act* ("*Act*") for:

- authorization to recover double the amount of the tenants' four security deposits, pursuant to section 38; and
- authorization to recover the filing fees for all four applications, pursuant to section 72.

The landlord's agent and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 45 minutes.

The landlord's agent confirmed that he had permission to speak on behalf of the landlord company named in these applications. The tenant's agent confirmed that she had permission to represent the tenant named in these applications.

During the hearing, the tenant's agent confirmed that she did not want to amend the landlord company name in the tenant's four applications, despite the fact that the landlord's agent confirmed that the landlord company name was incorrect.

Preliminary Issue – Direct Request Proceedings and Service of Documents

The landlord's agent confirmed receipt of the tenant's four applications for dispute resolution hearing packages. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenant's four applications.

The tenant's four applications were originally scheduled as direct request proceedings, which are non-participatory hearings. The direct request proceedings are based on the tenant's paper applications only, not any submissions from the landlord. "Four interim decisions," all dated November 30, 2020, were issued by an Adjudicator for the direct request proceedings. The four interim decisions adjourned the direct request proceedings to four different participatory hearings on March 18, March 19, March 22, and March 23, 2021.

The tenant was required to serve the landlord with a copy of the four interim decisions, the notices of reconvened hearing and all other required documents. The landlord's agent confirmed receipt of the above documents for all four applications, from the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the above required documents for all four applications.

The landlord's agent confirmed receipt of the tenant's original four applications for dispute resolution hearing packages. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's four original applications.

The landlord's agent claimed that he did not serve the landlord's evidence to the tenant. The tenant's agent stated that the tenant did not receive any evidence from the landlord. I notified both parties that I could not consider any evidence from the landlord at this hearing or in my decision, as the landlord did not serve this evidence to the tenant, as required. I was not required to consider the landlord's evidence in any event, as I did not make a decision based on the merits of the tenant's four applications.

Preliminary Issue – Joining the Tenant's Four Applications

At the outset of the hearing, the tenant's agent confirmed that the tenant filed three additional applications for dispute resolution against the landlord. These additional three file numbers are contained on the front page of this decision. The tenant's agent confirmed that the tenant filed for double the value of her security deposits and the $100.00 application filing fees in these three additional applications regarding three different rental properties. The landlord's agent confirmed that the landlord received the tenant's three additional applications.

Rule 2.10 of the Residential Tenancy Branch *Rules of Procedure* states the following:

> *2.10 Joining applications*

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
b) whether all applications name the same landlord;
c) whether the remedies sought in each application are similar; or
d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

Residential Tenancy Policy Guideline 17 states the following, in part:

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.

…

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit…

The same landlord and tenant are named in all four applications. All four applications deal with four residential properties which are managed by one tenant in a business venture with her company. The remedies sought in all four applications relate to the same issue of the security deposits, and the same facts and law regarding the security deposits will be considered in all four applications.

During the hearing, both parties consented to the tenant's three additional applications being heard at the same time at this hearing. For the above reasons, I notified both parties that I would be hearing the tenants' four applications at the same time at this hearing. Hearing all four applications together would be efficient and consistent, avoiding duplication of facts and procedure. Both parties confirmed their understanding of and agreement to same.

Both parties confirmed that they would not attend the three hearings on March 19, March 22, and March 23, 2021. Those hearings have been cancelled and I informed both parties of same during this hearing. Both parties confirmed their understanding of and agreement to same.

Preliminary Issue – Jurisdiction to hear Four Applications

During the hearing, I asked both parties to make submissions regarding jurisdiction, since the tenant provided multiple tenancy agreements between both parties for different rental units in her application evidence. In her online application, the tenant described: "I had several properties with this landlord. Attached is a tenancy agreement (for another property)…"

Both parties agreed to the following facts. The tenant did not live at any of the four rental units, she lived at another separate property. The tenant rented the four rental units, pursuant to four tenancy agreements with the same landlord company. The tenant paid monthly rent and security deposits to the same landlord, for each rental unit. The tenant then re-rented out the four rental units to students, from whom she earned a profit of rent money, for her own company. The tenant rented all four rental units as part of her commercial business venture.

The landlord's agent stated that I did not have jurisdiction to hear these four applications because the tenant used the four rental units for business purposes, since the tenant did not live in them and would re-rent them out in order to make money from students.

The tenant's agent maintained that I did have jurisdiction to hear this matter. She maintained that since the tenant was successful in a previous Residential Tenancy Branch ("RTB") application on November 30, 2020, regarding a different rental property, these four applications should be no different. She claimed that there was also another previous hearing on March 16, 2021, for a rental property where the tenant was residing, where the tenant's application was dismissed with leave to reapply, due to a service issue, since the landlord did not appear. The tenant's agent provided two different file numbers for both previous RTB applications and hearings, which appear on the cover page of this decision.

Analysis – Jurisdiction to hear Four Applications

Section 4(d) of the *Act*, outlines a tenancy in which the *Act* does not apply:

4 This Act does not apply to

(d) living accommodation included with premises that

(i) are primarily occupied for business purposes, and

(ii) are rented under a single agreement,

I find that this application is excluded by section 4(d) of the *Act* as all four rental units were living accommodations primarily occupied for business purposes and rented under single agreements for each rental unit.

The tenant did not live in any of the four rental units; she lived at a separate property. The tenant was collecting a profit in rent from multiple students in each of the four rental units. I find that this was a profitable business venture for the tenant, who has her own company. I find that the tenant rented the four rental units for a singular purpose, and that purpose was to make money and not for her own personal housing or shelter.

For the above reasons, I find that this is not a matter within the jurisdiction of the RTB. Accordingly, I decline jurisdiction over the tenant's four applications.

While there were two previous RTB hearings, I find that this does not change my decision regarding jurisdiction. The first previous RTB decision, dated November 30, 2020, was made by an Adjudicator, for a direct request proceeding, which is a non-participatory hearing. The direct request proceeding was based on the tenant's paper application only, not any submissions from the landlord. There was no jurisdictional question raised or decided in the Adjudicator's written decision. I find that I am not bound by that decision, as it is regarding a different rental unit, which neither party provided specific submissions about, during this hearing.

The second previous RTB decision, dated March 16, 2021, was made by a different Arbitrator. That decision dismissed the tenant's application with leave to reapply, and concerned a different rental unit, where the tenant actually resided at that property, according to the tenant's agent. Therefore, I find that I am not bound by that decision either.

Conclusion

I decline jurisdiction over the tenant's four applications. I make no determination on the merits of the tenant's four applications.

Nothing in my decision prevents either party from advancing their claims before a Court of competent jurisdiction.

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 23, 2021

Residential Tenancy Branch