



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL, MNSD, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the Act). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, extensive discussions took place and it was determined that the tenant, J.Y. required a translator for the Mandarin language with the assistance of her translator, C.S.

Both parties confirmed the landlords served the tenants with the notice of hearing package via email on May 23, 2021. The tenants confirmed that the email was received on May 24, 2021 as she is out of the country. The tenant stated that despite receiving the landlords' hearing package so late she is still able to respond to the landlord's application. The tenants stated that the landlords were served with their notice of hearing package via Canada Post Registered Mail on January 29, 2021. Neither party raised any service issues. On this basis, both parties are deemed sufficiently served as per section 90 of the Act.

Both parties confirmed the landlords served the tenants with their submitted 31 documentary evidence files via email on May 28, 2021. Both parties also confirmed the tenants served their submitted 6 documentary evidence files via email to the landlords on May 28, 2021. Neither party raised any service issues. On this basis both parties are deemed sufficiently served as per section 90 of the Act.

At 68 minutes past the start of the scheduled hearing time, the hearing was adjourned due to a lack of time. Both parties were advised that a notice of adjournment would be sent to each party to provide the new adjournment date and time. Both parties were also advised that no new evidence was to be submitted nor would it be accepted. The tenant, J.Y. stated that she did not require a translator to assist her but asked in order to save time, if C.S. could stand by to assist if necessary and the hearing could proceed without C.S. translating everything. The tenant confirmed in her direct testimony that she was able to continue the hearing without the direct assistance of a translator.

Both parties were advised that due to the lengthy time used with the preliminary procedural issues that both parties are cautioned that they should make plans to have a translator attend on their behalf to assist themselves.

On June 29, 2021 the hearing resumed with both parties and concluded after 122 minutes.

At the outset, the landlord was asked if a detailed list of the monetary claim had been completed (RTB-37, Monetary order Worksheet) providing information for the landlord's \$6,080.00 claim. Discussions over 60 minutes failed to yield a list of the landlord's claim. The landlord was also asked if the monetary claim details were listed anywhere in the landlord's application which resulted in a negative answer. The tenant was asked if she had received a copy of a monetary order worksheet or a detailed list of the monetary claim. The tenant answered in the negative. As such, I find that without the details of the monetary claim provided to both the Respondent/Tenant and the

Residential Tenancy Branch the landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The hearing shall proceed on the tenant's application only.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

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. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The tenants seek a monetary claim of \$3,400.00 which consists of:

\$3,300.00	Security Deposit
\$100.00	Filing Fee

Both parties confirmed that the tenancy ended on October 24, 2020. Both parties confirmed that the landlord received a \$3,300.00 security deposit from the tenant which the landlord currently holds.

The tenant stated that she provided her forwarding address via "WeChat" on January 21, 2021. The landlord disputed this claim that at no time has the tenant provided her forwarding address in writing for return of the security deposit. The tenant was unable to provide any supporting evidence of providing the forwarding address in writing to the landlord.

The tenant later stated after 43 minutes that she had also provided her forwarding address in writing in a letter by sending it to the landlord on December 29, 2020 via Canada Post Registered Mail. The landlord disputed this claim arguing that at no time did the landlord receive the tenant's forwarding address in writing. The landlord confirmed that she had received two mailed packages from the tenant, but that neither package contained the tenant's request in writing for return of the \$3,300.00 security deposit and providing her forwarding address for its return. The tenant provided the Canada Post Customer Receipt Tracking No. (noted on the cover of this decision) as

confirmation of service. The landlord reargued that a package was received, but that there was no letter in writing requesting the return of the security deposit nor did the tenant provide her forwarding address in writing.

Analysis

In this claim the both parties have confirmed that the tenant paid the landlord a \$3,300.00 security deposit and that the tenancy ended on October 24, 2020. However, the tenant has also claimed that her forwarding address in writing requesting the return of the \$3,300.00 security deposit was sent to the landlord via “WeChat” on January 21, 2021 and again in a letter via Canada Post Registered Mail on December 29, 2020.

Section 38 of the Act requires the landlord to either return all of a tenant’s security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or **a tenant’s provision of a forwarding address in writing**. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I find that on the tenant’s attempt at service via “WeChat” of the tenant’s forwarding address in writing to be insufficient pursuant to section 38 of the Act. The Act states specifically, “in writing”. “WeChat” is an online Chinese multi-purpose messaging, social media and mobile payment application. As such, “WeChat” is not “in writing” as defined under the Residential Tenancy Act.

I also find on the tenant’s attempt at service via Canada Post Registered Mail on December 29, 2020 to be unsupported. Despite the tenant providing the Canada Post Customer Receipt Tracking Number as confirmation, the landlord has repeatedly disputed that no such written letter was included despite receiving a mailed package as confirmed by the landlord. The tenant was unable to provide a copy of the sent letter.

I find that the tenant has failed to provide sufficient evidence to satisfy me that the tenant’s forwarding address was provided to the landlord in writing. As such, the tenant’s application for return of the security deposit is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods.

This hearing was conducted over 190 minutes with both parties using family/friends to translate. While the assistance of these parties were invaluable, I note that the landlord repeatedly stated that the tenant’s translator was not properly translating for the tenant. I also note that the tenant frequently did not wait for her translator to assist her in

translating. Frequently during the hearing questions and answers were repeatedly confirmed by parties who later stated that they did not understand the question. As previously stated in my interim decision, I find that both parties would greatly benefit from having a “professional” or “proficient” translator to assist them. All of the evidence recorded above required extensive questioning and confirmation of each parties evidence before it was accepted.

Conclusion

The tenant’s application was dismissed 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: June 30, 2021

Residential Tenancy Branch