



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDL-S MNRL-S MNDCL-S FFL

Introduction

This hearing dealt with a Review Hearing of the landlord's original Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary claim of \$4,596.79 for damages to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

On October 7, 2020, Arbitrator Lee issued a decision regarding this matter. On November 19, 2020 Arbitrator McKay suspended the October 7, 2020 decision which I find includes the order, pending the outcome of this Review Hearing, which is a new hearing.

The Review Hearing began on March 8, 2021 and was adjourned to June 3, 2021 due to services issues. The Interim Decision dated March 8, 2021 should be read in conjunction with this decision. On June 3, 2021 the landlord agent SK (agent) and the tenants IH, HP, LG and NB (tenants) attended the Review Hearing and were affirmed. The parties were affirmed and the hearing process was explained to the parties. All parties were provided the opportunity to provide their evidence and give testimony. In addition, the parties were given the opportunity to ask questions. The relevant evidence has been referenced in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed on June 3, 2021 that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the

purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issue to be Decided

- Should the original decision be confirmed, varied or set aside under the Act?

Background and Evidence

The landlord raised the issue of a Settlement and Release Agreement signed by all tenants on November 4, 2020 and signed by the agent on November 5, 2020 (Settlement Agreement). A copy of the Settlement Agreement was submitted in evidence for my consideration and states in part the following:

Upon receipt of this agreement signed by all Tenants, the Landlord is to send a scan of the money order within 72 hours and send it by registered mail to [address of tenant IH].

Upon receipt of the money order, it shall be deemed that all Tenants have received the \$353.31 CAD and the Tenants will not bring any action for the \$353.31 CAD, commence any proceedings for the \$353.31 CAD or register the judgement in any court for the collection of the \$353.31 CAD.

The Tenants jointly understand it is at their risk that they are instructing the Landlord to make the money order payable solely to [name of tenant IH], and waive any rights to bring an action against the Landlord in the event [name of tenant IH] does not distribute the funds to the other cotenants...

[Reproduced as written excepted for anonymizing address and names for privacy reasons]

In addition to the above, the agent cited *Lumsden et al. v. The Toronto Police Services Board et al.*, 2019 ONSC 5052 (*Lumsden et al. v. The Toronto Police Services Board*), of the Ontario Superior Court. The agent stated that the Settlement Agreement was not submitted in evidence for Arbitrator McKay and is a binding agreement between the parties. I find that by not providing the Settlement Agreement as part of the Review

Consideration Application, that the tenants omitted a document that is relevant to this tenancy and which is now before me at the Review Hearing.

In the interests of fairness, I heard from the parties during the Review Hearing, which lasted a total of 133 minutes. While I made some verbal findings during the hearing, I rescind all verbal findings as I have now had the benefit of reviewing the original October 7, 2021 decision in detail, the Review Consideration Decision in detail and *Lumsden et al. v. The Toronto Police Services Board* in detail.

In addition, I had the benefit of hearing from both parties regarding the “new and relevant” evidence presented by the tenants, which resulted in the original decision being suspended pending this Review Hearing. The new and relevant evidence, in essence relates to a “Written Statement” (Written Statement) from the new tenants who moved into the rental unit after the tenants vacated the rental unit on April 28, 2020. While the parties disputed what the contents of the Written Statement meant in terms of the Rent Shortfall for May 2020 of \$1,200.00 as addressed in the original decision (\$1,200.00 Rent Shortfall) I note that none of the new tenants were present at the Review Hearing to present witness testimony. As a result, the parties were advised that the Written Statement was of limited weight as the new tenants could not be cross-examined as to the contents of the Written Statement.

Furthermore, section 5 of the new tenants’ tenancy agreement was cut and pasted into the Written Statement, which confirms that monthly rent was \$4,125.00 payable monthly and that there was a rent discount of \$1,200.00 for the month of May 2020.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, in terms of the Written Statement, I find that section 5 of the new tenants’ tenancy agreement was cut and pasted into the Written Statement which I find confirms that monthly rent was \$4,125.00 payable monthly and that there was a rent discount of \$1,200.00 for the month of May 2020. I am not convinced that the agent and the new tenants agreed verbally to a different arrangement as the agent disputed this during the hearing and the new tenants were not present at the hearing to be cross-examined or speak to the contents of the Written Agreement. Therefore, I find that the written tenancy agreement section 5 holds more weight than the disputed contents of the Written Statement submitted by the tenants, which contradicts what the monthly rent was in section 5 of the tenancy agreement of the new tenants. In other words, I find the

written tenancy agreement of the new tenants outweighs any disputed verbal arrangement being alleged at the Review Hearing by way of the Written Statement.

Furthermore, as I did not realize at the time of the Review Hearing that the Settlement Agreement was signed by all parties on November 4, 2020, which was the same date one of the tenants applied for a Review Consideration, which resulted in this Review Hearing, I find that *Lumsden et al. v. The Toronto Police Services Board* is both relevant and compelling as the Ontario Superior Court addressed the essential features of a binding settlement:

- There has to be a mutual intention to create a legally binding contract.
- The parties must reach an agreement on all the essential terms of the contract.
- The existence of a settlement agreement is measured by an objective reading of the language chosen by the parties to reflect their agreement. It does not depend on an inquiry into the actual state of mind of the parties.
- There is no requirement of formal minutes of settlement. An email exchange can suffice.
- A settlement implies a promise to furnish a release, unless there is an agreement to the contrary. However, no party is bound to execute a complex or unusual form of release.

Given the above, and having since reviewed the Settlement Agreement in detail and in the absence of any claim made during the Review Hearing that the tenants suffered duress or were coerced into signing the Settlement Agreement, I find that the parties agreed on November 4, 2020 that the monetary amount, which matches the finding of the original decision by Arbitrator Lee dated October 7, 2020, would be paid to the tenants, and was confirmed as being received by the tenants during this Review Hearing. I also find that the Settlement Agreement was legally binding on the parties and was not provided by the tenants when the Review Consideration Application was submitted and as a result, and pursuant to section 82(3) of the Act, **I confirm** the original decision and monetary order dated October 7, 2020 as I find that the Written Statement before me is not compelling.

Conclusion

The original decision and monetary order dated October 7, 2020 are confirmed and are of full force and effect.

This decision will be emailed to both parties.

The Settlement Agreement between the parties is binding.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 9, 2021

Residential Tenancy Branch