



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was ordered pursuant to a decision issued by an Adjudicator on April 26, 2021 in response to the tenant's application for return of the security deposit under the Direct Request procedure.

At the hearing the tenant appeared along with her son and daughter who were assisting her with English. There was no appearance on part of the landlord.

Since the landlord did not appear, I explored service of hearing materials upon the landlord.

The tenant sent the original Application for Dispute Resolution to the landlord by registered mail on April 1, 2021 and a search of the registered mail tracking number showed the registered mail was delivered on April 22, 2021. The Residential Tenancy Branch received a submission from the landlord acknowledging receipt of the original Application for Dispute Resolution.

As seen in the Adjudicator's Interim Decision of April 26, 2021, the tenant was required to send the Interim Decision and Notice of Dispute Resolution Proceeding to the landlord. The tenant submitted this was accomplished by sending registered mail to the landlord on April 29, 2021. A search of the registered mail tracking number showed delivery of the registered mail on May 19, 2021. The landlord made a submission that he received the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch on May 5, 2021.

The tenant sent an Amendment to an Application for Dispute Resolution to the landlord via registered mail on May 17, 2021 and a search of the tracking number showed the registered mail was delivered on May 19, 2021.

Based on the evidence before me, including registered mail receipts and confirmation of delivery by Canada Post, I was satisfied the tenant duly served the landlord with notification of this proceeding, including the Amendment.

The style of cause was amended to exclude the tenant's children as named tenants. I determined the tenant's children were occupants under their mother's tenancy agreement. Two of the tenant's children were at the hearing for purposes of assisting their mother as she has limited ability to communicate in English.

Issue(s) to be Decided

1. Has the tenant established an entitlement to return of the security deposit?
2. Has the tenant established an entitlement to compensation as claimed by way of the Amendment?
3. Award of the filing fee.

Background and Evidence

Under an oral tenancy agreement, the tenancy started in February 2011 and the tenant paid a security deposit of \$650.00. The rent was initially set at \$1300.00 payable on the first day of every month. In November 2017 the parties participated in a dispute resolution proceeding (file number referenced on the cover page of this decision) and the monthly rent was set at \$1450.00 until such time it was legally increased. By the time the tenancy ended, the monthly rent had increased to \$1600.00 per month.

The tenant submitted that the landlord fraudulently obtained an Order of Possession from the Residential Tenancy Branch on January 21, 2021 (file number referenced on cover page of this decision) which was never served upon her and then the landlord fraudulently obtained a Writ of Possession from the Supreme Court of British Columbia, which was executed without warning on February 24, 2021.

The tenant acknowledged that she did not give the landlord a forwarding address before filing this Application for Dispute Resolution. The tenant's daughter pointed out that the tenant's forwarding address is provided on the tenant's Application for Dispute Resolution.

The tenant also applied for compensation of \$4550.00 with respect to damages or losses that resulted from the unlawful eviction, including an alleged theft of cash by the

bailiff's movers, storage costs and moving costs. I noted that the Amendment did not provide a detailed breakdown as to how the sum of \$4550.00 was calculated. The tenant acknowledged that she had yet to explore options available where a person commits fraud or perjury to unlawfully obtain an order of the court (the Writ of Possession) such as reporting the crime to the police and/or the Supreme Court.

Analysis

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenant did not serve the landlord with her forwarding address before filing this Application for Dispute Resolution. As such, I find the tenant's application for return of the security deposit was made pre-maturely.

In keeping with Residential Tenancy Branch Practice Guideline 2015-01, I dismiss the tenant's request for return of the security deposit with leave to reapply.

Before reapplying the tenant must serve the landlord with her forwarding address. Upon receipt of the forwarding address, the landlord will have 15 days to either refund the security deposit to the tenant or make a Landlord's Application for Dispute Resolution to make a claim against it. If the landlord fails to do so and comply with section 38(1) the tenant may then make another Application for Dispute Resolution seeking return of double the security deposit.

As for the tenant's other claims related to the alleged fraudulently obtained Writ of Possession, I dismiss these claims with leave to reapply. The tenant did not include a detailed calculation in support of the sum claimed, as required under the Rules of Procedure. Further, the Writ of Possession is an order of the court, which is a higher authority than the Residential Tenancy Branch, and I am of the view that committing fraud or perjury at the court is a criminal matter that ought to be brought to the court and/or police first.

I make no award for recovery of the filing fee.

Conclusion

The tenant's application is dismissed with leave to reapply.

Before reapplying for return of the security deposit, the tenant must serve the landlord with her forwarding address and give the landlord 15 days to take action by either refunding the deposit or making a claim against the security deposit. If the landlord fails to do so, the tenant may reapply for return of double the security deposit.

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: October 21, 2021

Residential Tenancy Branch