Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD MNETC FFT**

Introduction

This hearing was reconvened by way of conference call in response to the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- an order to seek the return of all of the security deposit and/or pet deposit pursuant to section 38;
- compensation from the purchaser of the rental unit related to a Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to sections 51.4 and 67; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The original hearing of the Application was held on June 17, 2022 ("Original Hearing"). The Landlord did not attend the Original Hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire duration of the Original Hearing, which ended at 2:01 pm, in order to enable the Landlord to call into that teleconference hearing. The Tenant attended the Original Hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding for the Original Hearing ("Original NDRP"). I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into the teleconference for the Original Hearing.

During the Original Hearing, it became clear that additional evidence was required to determine whether the Tenant named the correct party as the Landlord in respect of her claim for compensation under section 51.2 of the Act. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing and

issued an interim decision dated June 20, 2022 ("Interim Decision"). In the Interim Decision, I ordered the Tenant to submit certain documents, including a complete copy of the 2 Month Notice, to the Residential Tenancy Branch ("RTB"). The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing, scheduled for August 2, 2022 at 11:00 am ("Adjourned Hearing"), were served on the parties by the RTB.

The Landlord did not attend the Adjourned Hearing. I left the teleconference hearing connection open for the entire duration of the Adjourned Hearing, which ended at 11:22 am, in order to enable the Landlord to call into this teleconference for the Adjourned Hearing. The Tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding for the Adjourned Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into the teleconference for the Adjourned Hearing.

At the Original Hearing, the Tenant stated she served the Original NDRP and her evidence ("Original NDRP Package") on the Landlord by registered mail on November 19, 2021. The Tenant provided the Canada Post tracking number to corroborate her testimony of service of the Original NDRP Package on the Landlord. I find the Tenant served the Original NDRP Package on the Landlord, named by the Tenant as the respondent in the Application, in accordance with the provisions of section 88 and 89 of the Act.

The Tenant stated she was not served with any evidence by the Landlord.

Prior to the Adjourned Hearing, the Tenant submitted additional documents to the RTB, including a complete copy of the 2 Month Notice.

Preliminary Matter – Severance and Dismissal of the Tenant's Claim for Return of Deposit

The Tenant stated she was served with the 2 Month Notice by the landlord ("Original Landlord") with whom she had entered into the tenancy agreement for the rental unit. The Tenant testified the 2 Month Notice stated the reason for ending the tenancy was all of the conditions for the sale of the rental unit have been satisfied and the purchaser was asked the Original Landlord to serve the 2 Month Notice on the Tenant because SS, or a close family member of the Purchaser intended in good faith to occupy the rental unit. The Tenant testified the date for move out stated in the 2 Month Notice was

September 30, 2022 and that, in accordance with the 2 Month Notice, she vacated the rental unit. The Tenant stated the Purchaser did not move in, or occupy, the rental unit but instead sold the rental unit to another purchaser ("Subsequent Purchaser").

The Tenant stated she and the Original Landlord performed a Move-In and Move-Out Condition Inspection Report. The Tenant stated she could not recall if she provided her forwarding address on the Move-Out Inspection Report. The Tenant stated the Original Landlord did not provide her with a copy of the Condition Inspection Report.

Subsection 35(1) and 35(4) of the Act state:

> 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
>
> (a) on or after the day the tenant ceases to occupy the rental unit, or
>
> (b) on another mutually agreed day.
>
> (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 18 of the *Residential Tenancy Regulations* states:

> 18(1) The landlord must give the tenant a copy of the signed condition inspection report
>
> (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
>
> (b) *of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of*
>
> *(I) the date the condition inspection is completed, and*
>
> *(ii) the date the landlord receives the tenant's forwarding address in writing.*
>
> (2) The landlord must use a service method described in section 88 of the Act *[service of documents]*.

[emphasis added in italics]

The Tenant stated she served the NDRP on the Purchaser using the name and address stated on the 2 Month Notice for the Purchaser. The Tenant stated she was not aware of the name or names of the Subsequent Purchaser.

Sections 38 and 39 of the Act state:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) *the date the landlord receives the tenant's forwarding address in writing,*

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of

the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii) transfer of funds to the tenant.

39 Despite any other provision of this Act, *if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[emphasis added in italics]

As stated in section 38(1), the obligation of a landlord to return a security deposit or, alternatively, make an application for dispute resolution to claim against the security deposit, requires the tenant to firstly have provided the landlord with the tenant’s forwarding address in writing. The tenant may provide their forwarding address either on the Condition Inspection Report or, alternatively, by serving the landlord with a separate

written notice ("Forwarding Address Notice") that provides the tenant's forwarding address.

Section 93 of the Act states:

> 93 The obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit *run with the land or reversion*.
>
> [emphasis in italics added]

Pursuant to section 83, where the rental unit is sold, the obligations of the original landlord with respect to the return of the security or pet damage deposit run with the land or reversion. In the present case, the rental unit was sold by the Original Landlord to SS who, based on the Tenant's testimony, resold the rental unit to the Subsequent Purchaser. As such, the application for dispute resolution made by the Tenant must name the current owner of the Rental unit. The Tenant did not submit any evidence, such as a current State of Title Certificate that discloses ZZ is the current owner of the rental unit. Furthermore, the Tenant did not submit any evidence that she served the Forwarding Address Notice on either the Original Owner, or alternatively, the Subsequent Purchaser. As such, I dismiss the Tenant's claim for the return of her security deposit with leave to reapply. I note that, pursuant to the provisions of section 39, the Tenant must serve her Forwarding Address Notice on the Subsequent Purchaser in writing within one year after the end of her tenancy or her right to the return of the security deposit will be extinguished.

Preliminary Matter – Dismissal of Tenant's Claim for Compensation for Landlord's Use of Property

As noted above, the 2 Month Notice stated the purchaser of the rental unit was SS. The Tenant stated that, pursuant to the 2 Month Notice, she vacated the rental unit on the effective date of the 2 Month Notice, being September 30, 2022. The Tenant stated she discovered SS sold the rental unit less than six months after the effective date of the 2 Month Notice. The Tenant stated she was seeking compensation equal to 12 times the rent for the rental unit pursuant to section 51.4 of the Act.

Section 51(2) of the Act states:

> 51(2) Subject to subsection (3), the landlord or, if applicable, *the purchaser* who asked the landlord to give the notice must pay the tenant, in addition to

the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[emphasis in italics added]

In order to make a claim for compensation pursuant to section 51(2) of the Act, the Tenant must name the purchaser of the rental unit, SS, who asked the landlord to serve the notice as it is the purchaser who is responsible to pay the compensation to the Tenant and not a subsequent purchaser who purchased the rental unit from SS. In this case, the Tenant named XF as the respondent in the Application instead of naming SS, the party who purchased the rental unit from the Original Owner, as the respondent. As such, I find the Tenant has not complied with the requirements of section 51(2) of the Act. Based on the foregoing, I dismiss the Tenant's claim for compensation related to the 2 Month Notice with leave to reapply.

Conclusion

The Tenant's Application is dismissed in its entirety with leave to reapply. The issuance of this decision does not extend any applicable deadlines under the Act.

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: August 9, 2022

Residential Tenancy Branch