



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD MNDCT FFT**

Introduction

This hearing was convened 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;
- a monetary order for compensation from the Landlord pursuant to section 67 of the Act; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 2:34 pm in order to enable the Landlord to call into this teleconference hearing scheduled for 1:30 pm. The Tenant attended the hearing and he 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 were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

Preliminary Matter – Service of NDRP on the Landlord

The Tenant stated the tenancy agreement ("Tenancy Agreement"), dated September 20, 2012, was between the Tenant and two landlords ("JM" and "GM" and collectively the "Original Landlords"). The Tenant stated he became aware the Original Landlords sold the rental unit around October 2021. The Tenant stated he obtained an email address for the Landlord he named as respondent in the Application from the agent for

the Original Landlords. The Tenant stated he was provided with an email address ("Email Address") by the agent for the Original Owners. The Tenant stated he obtained the name of the respondent named in the Application from a person ("Neighbour") who moved into the rental unit adjoining the Tenant's rental unit who indicated he was an employee of the named respondent. The Tenant stated he filed the Application and applied to the Residential Tenancy Branch ("RTB") for an Order for Substituted Service to serve the Landlord with the NDRP using the Email Address. The Tenant stated that an adjudicator of the RTB granted him an order to allow him to serve the NDRP on the Landlord by email. The Tenant did not submit a copy of the email he sent to the Landlord with the NDRP or, alternatively, submit a reply from the Landlord that acknowledged receipt of the NDRP, to corroborate his testimony.

The Tenant stated the rental unit was demolished after he vacated the rental unit on January 3, 2022 and a new building has been erected on the property ("Property") on which the rental unit was located. Section 38(1) of the Act states:

- 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.

[emphasis in italics added]

Pursuant to section 38(1), the Tenant is required to serve the *landlord* with a written notice that provides the landlord with the Tenant's forwarding address. Section 1 of the Act defines "landlord" as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and *successors in title to a person referred to in paragraph (a)*;
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

[emphasis in italics added]

The Tenant did not provide any evidence, such as a copy of the State of Title Certificate for the Property to confirm that the name of the successor in title to the Property is the same as the respondent named in the Application. I note that the last name of the respondent in the Application ends with “Group” and that the use of the word group at the end of a name generally indicates that two or more corporate entities are doing business together under a group name. Accordingly, the name used by a “group” of companies is not necessarily the legal name of the successor in title to the land on which the rental unit was located. As such, I find it is unlikely that the legal name of the registered owner of the Property on which the rental unit was located is the same as the name stated as the respondent in the Application. Based on the foregoing, I am not satisfied the Tenant has named the correct person or legal entity that is actually the successor in title to the Original Landlords nor am I satisfied the Tenant has served the NDRP on the actual successor in title to the Property.

The Tenant also served a written notice containing his forwarding address (“Notice of Forwarding Address”), for the return of his security deposit of \$1,075.00 (“Deposit”), with the Neighbour on January 11, 2022. The Tenant submitted a copy of the Notice of Forwarding Address into evidence but he did not provide any evidence to corroborate his testimony that he served the Notice of Forwarding Address on the Neighbour. Furthermore, the Tenant did not provide any evidence that the Neighbour is an employee or an agent of the successor landlord. As such, I am not satisfied that the successor in title to the Property was served by the Tenant with the Notice of Forwarding Address.

Based on the foregoing, I dismiss the Application with leave to reapply. The Tenant has the option of making a new application for dispute resolution to seek recovery of the Deposit.

The Tenant has the option of calling the Contact Centre of the RTB to obtain information on the methods by which he may obtain a State of Title Certificate for the Property, the appropriate procedures for serving the registered owner named on the State of Title Certificate with a written notice providing his forwarding address for the return of the Deposit, the appropriate time to make an application for dispute resolution to seek the return of the Deposit and the appropriate procedures for serving the Notice of Dispute Resolution on the registered owner named on the State of Title Certificate. *I note that, pursuant to section 39, if a tenant does not give the landlord, as defined in section 1 of the Act, a forwarding address in writing within one year after the end of the tenancy, the right of the Tenant to the return of the Deposit is extinguished and the landlord may keep the deposit.* I also note that, assuming that a tenant serves a written notice of his forwarding address on the successor landlord within 1 year of the end of the tenancy, the tenant must file an application for dispute resolution within 2 years of the date the tenancy ended. This decision does not extend any applicable deadlines set out in the Act.

Conclusion

The Tenant's claims set out in the Application are 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: October 7, 2022

Residential Tenancy Branch