



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

This hearing was convened in response to the landlord's Request for Correction of the original decision dated October 21, 2013 that had been provided after the original hearing on the matter convened on October 21, 2013.

That decision granted the landlord his full monetary claim and doubled the amount of the security deposit to which the tenant was entitled. The decision also provided a monetary order to the tenant for the difference between the landlord's claim and the doubled security deposit for a total owed to the tenant of \$412.50.

In the landlord's Request for Correction the landlord raised the issue that there may have been some confusion over the date the tenant serve him with and he received her forwarding address. In response to that Request for Correction this hearing was reconvened to hear only matters specific to that particular issue.

This decision is provided in consideration of the additional testimony of both parties related to the provision of the forwarding address and its impact on the original decision dated October 21, 2013. This decision must be read in conjunction with the decision of October 21, 2013 and the Decision on Request for Correction of November 8, 2013.

While the tenant had provided documentary evidence related to the issue to the Residential Tenancy Branch prior to the reconvened hearing she did not provide it to the landlord and as such I have not considered the documents submitted. However, I advised the tenant during the hearing that she could provide testimony in regards to the documents submitted.

Issue(s) to be Decided

The issues to be decided are when the tenant provided her forwarding address to the landlord; when the landlord received the forwarding address and whether the original decision and order of October 21, 2013 should be set aside; varied or confirmed.

Background and Evidence

The tenant testified that she served the landlord with her forwarding address by registered mail on June 20, 2013 and she provided the tracking number for this service. The landlord testified he received the tenant's registered mail on July 2, 2013.

The parties agree the tenant used the dispute address to send her registered mail containing her forwarding address. The tenant submits she used this address because the landlord advised to her to do so.

The tenant testified that when she moved out of the rental unit she was of the impression the landlord had intended to move into the dispute address. So when she went to send her address to the landlord she contacted him to confirm what address she should use. The tenant submits she spoke to the landlord no more than a week before she sent the registered mail.

The tenant submits she asked the landlord specifically if she should send it to the street address of the dispute address and he confirmed that she should. The landlord testified that he advised the tenant to serve it to the service address provided in the tenancy agreement. A copy of the tenancy agreement was not provided into evidence but the landlord testified the address in the tenancy agreement is the same as that on his Application for Dispute Resolution.

The landlord testified that the tenant's letter was sent to the dispute address and that he did not receive the notice of the registered mail until his current tenant at the dispute address paid his rent to the landlord on July 1, 2013.

When asked why, in the previous hearing the landlord testified repeatedly to my query about when he received the forwarding address, he responded "before the end of June" he testified that he did not want to see the tenant penalized for not getting the forwarding address to him within 1 year.

Analysis

Much of the evidence presented to me consisted of disputed testimony and different versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, it becomes virtually impossible for a third party to determine what actually occurred.

However, based on the balance of probabilities, I find it unlikely that the landlord would have provided the tenant with an address to send him her letter that he would not use on a daily basis. In addition, I find that it is possible that during their discussion the parties made have had a misunderstanding or miscommunication.

As a result, I find the reasons the landlord did not receive the tenant's forwarding address until July 2, 2013 to be reasonable and sufficient justification to accept this as the date he received the address.

Section 39 of the *Act* states that if a tenant does not give the landlord a forwarding address in writing within 1 year from the end of the tenancy the landlord may keep the security or pet damage deposits or both and the tenant has extinguished their right to the return of the deposits.

While my finding above would normally mean that the tenant had failed to provide her forwarding address in writing within 1 year and therefore extinguish her right to the return of her deposit, I find that the tenant's intent of seeking its return was made to the landlord well in advance of the end of that 1 year period.

Further, as per the landlord's testimony in this hearing explaining why he repeatedly stated in the previous hearing he received the forwarding address prior to the end of June was to ensure the tenant wasn't penalized, I find the landlord does not object to the tenant being entitled to her security deposit subject only to his monetary claim.

For these reasons, I find that it is reasonable to order that the tenant has not extinguished her right to claim the security deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

However, based on the above findings I now find that by filing his Application for Dispute Resolution seeking to claim against the security deposit on July 16, 2013 after receiving the tenant's forwarding address on July 2, 2013 the landlord has complied with Section 38(1) and the tenant is not entitled to double the amount of the security deposit.

Conclusion

Based on the above I set aside the monetary order dated October 21, 2013 issued in favour of the tenant in the amount of \$412.50.

I find the landlord remains entitled to monetary compensation pursuant to Section 67 in the amount of **\$512.50** comprised of \$372.50 costs to provide alternate accommodation to the new tenant; \$90.00 for overholding of this tenant and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$462.50 in partial satisfaction of this claim. I grant a monetary order to the **landlord** in the amount of **\$60.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: November 29, 2013

Residential Tenancy Branch

