



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on June 10, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Landlord submitted an envelope that was returned by Canada Post that corroborates this statement. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Tenant stated that she was out of town during that period; that she did not receive notification that she had received registered mail; and that she did not receive this package.

The Agent for the Landlord stated that on July 04, 2014 he sent the Tenant a letter in which he informed her of the time and date of this hearing and that he was providing her with a second copy of the Notice of Hearing for these proceedings. The Tenant stated that she did receive this letter but she did not receive the Notice of Hearing that the Agent for the Landlord refers to in his letter. The Tenant stated that she made no effort to obtain a copy of the Notice of Hearing referred to in the letter.

The Landlord submitted a package of evidence to the Residential Tenancy Branch on September 30, 2014. The Agent for the Landlord stated that he personally delivered these documents and photographs to the Tenant and dropped them at her feet on September 29, 2014. The Witness for the Landlord stated that he observed the delivery of these documents on September 29, 2014. The Tenant stated that these documents were delivered on September 30, 2014. As the Tenant acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

The Tenant stated that when she received the Landlord's evidence package she contacted the Residential Tenancy Branch and was provided with the information regarding the Landlord's claim and the details of how to join the teleconference. I note

that there is nothing in the audit notes pertaining to this file that indicates the Tenant contacted the Residential Tenancy Branch prior to the hearing on October 08, 2014.

The Tenant stated that she was prepared to proceed with the hearing on October 08, 2014 and she declined the opportunity for an adjournment for the purposes of considering the evidence she received in September.

There was insufficient time to conclude the hearing on October 08, 2014 so the matter was adjourned.

At the conclusion of the hearing on October 08, 2014 the parties were advised that the Tenant may submit any text messages, emails, or written documents exchanged between the parties during this tenancy, and that the Landlord may submit any documents that relate to those communications to the Residential Tenancy Branch. The parties were advised that anything submitted to the Residential Tenancy Branch must be served as evidence to the other party.

On December 02, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Landlord on December 01, 2014. The Agent for the Landlord stated that these documents were received on December 02, 2014. The Agent for the Landlord declined the opportunity for an adjournment to provide him more time to consider and respond to these documents.

The documents submitted on December 02, 2014 have been accepted as evidence for these proceedings. Although the Tenant submitted more documents than she was given authorization to do, I find that many of those documents are highly relevant to these matters and should be considered. In reaching this conclusion I was influenced, in part, by the fact that the hearing on December 09, 2014 was adjourned so the Landlord had ample opportunity to consider those documents.

There was insufficient time to conclude the hearing on December 09, 2014 so the matter was adjourned.

The hearing was reconvened on January 14, 2015. The Landlord was in attendance when the hearing commenced at 10:30 a.m. By the time this hearing was concluded at 10:41 a.m. the Tenant had not appeared. At the conclusion of this hearing on January 14, 2015 I advised the Landlord that I would render a decision on the basis of the information provided at the first two hearings.

At 1:38 p.m. on January 14, 2015 the Tenant faxed a document to the Residential Tenancy Branch in which the Tenant declared that she missed the hearing as her "son was very sick"; that she had taken him to the doctor; and that she wished a "new date".

I note that I had not rendered a final decision by the time I obtained a copy of this document. Upon receiving this document I determined it was appropriate to issue an

interim decision in which the Tenant was given the opportunity to submit evidence in support of her request for an adjournment and the Landlord was given the opportunity to respond to the request for an adjournment. This interim decision is dated January 19, 2015.

On February 05, 2014 the Tenant submitted a document to the Residential Tenancy Branch, which shows her son was absent from school on January 13, 2015 and January 14, 2015. The Tenant also submitted a document from a medical practitioner, dated February 03, 2015, which indicates the Tenant and her son were ill on January 14, 2015. On the basis of this information I determined that it was reasonable to adjourn the hearing of January 14, 2015 and reconvene the matter. An interim decision, dated February 16, 2015, was issued informing the parties of the adjournment.

I note that in my interim decision of January 19, 2015, I provided the Landlord with the opportunity to submit a response to the Tenant's application for an adjournment by February 20, 2014. I inadvertently overlooked this deadline when I granted the adjournment in my interim decision of February 16, 2015.

On February 17, 2015 the Landlord submitted a document in which he opposed the adjournment. In that document the Landlord notes that the note from the medical practitioner is dated February 03, 2015. He appears to suggest that the note does not refer to the Tenant being ill on January 14, 2015. In the document the note also does not declare that the Tenant was in need of "urgent medical care".

I find that the Landlord's submission of February 17, 2015 does not cause me to alter my decision to grant an adjournment. When making a determination regarding the adjournment I did note that the document from the medical practitioner was dated February 03, 2015, however it does corroborate the Tenant's submission that her son was ill on January 14, 2015.

Prior to granting an adjournment I did consider the fact that the note from the medical practitioner did not declare that the Tenant or her son was in urgent need of medical care. I concluded, however, that the medical evidence indicates that both the Tenant and her son were suffering from the stomach flu. As the stomach flu can impair a person's ability to participate fully in a hearing, I concluded that it was sufficiently serious to grant an adjournment.

In determining that an adjournment should be granted, I determined that it was best to err on the side of caution to ensure that both parties have a reasonable opportunity to be heard in this matter. In determining this matter I note that I would most certainly have granted an adjournment if the Tenant had attended the hearing and declared that she was not feeling well enough to proceed.

The hearing was reconvened on March 24, 2015.

During these proceedings the parties were given the opportunity to relevant oral evidence, to ask relevant questions, to call witnesses and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to retain all or part of the security deposit and/or to a monetary Order for damage to the rental unit/unpaid rent?

Background and Evidence

At the hearings on October 08, 2014 and December 09, 2014 each party gave evidence regarding the terms of their agreement and the condition of the rental unit at the end of the tenancy. During these hearings the Landlord and the Tenant agreed:

- the Landlord and the Tenant have a signed tenancy agreement that names the Respondent as the Tenant
- the tenancy began on July 01, 2011
- during the latter portion of the tenancy the Tenant was required to pay monthly rent of \$2,200.00 by the first day of each month
- the rental unit is a residential complex that has three separate suites
- the rental unit has been vacated.

At the conclusion of the hearing on December 09, 2014 the Agent for the Landlord stated that the Landlord's evidence had been presented in full. At the very conclusion of this hearing the Tenant raised the issue of jurisdiction and indicated that she would like to call a witness; however there was insufficient time to consider submissions regarding jurisdiction or to hear from the Tenant's witness.

At the hearing on March 24, 2015 the Tenant stated that when she entered into this tenancy agreement she was a director of a society that is not named in this Application for Dispute Resolution and that she was representing this society when she entered into the tenancy agreement. The Tenant submitted documentation that corroborates the assertion that she was the director of this society.

The Tenant stated that prior to becoming a director of this society she was a director of a similar society and that the name of the society was changed on October 14, 2010. The Tenant submitted documentation that supports this submission.

The Landlord does not dispute that the Tenant was the director of either society.

The Tenant stated that all of the rent payments made during the tenancy were made with a cheque that names one of the societies. The Agent for the Landlord stated that some rent payments were made with a cheque that names a society and some were made with a cheque that names the Tenant.

The Tenant stated that the rental unit was used for the purpose of the second society and that she did not use the rental unit for personal reasons. The Tenant stated that the purpose of both societies was to provide support to individuals with drug and alcohol addictions.

The Tenant submitted a Certificate of Incorporation for original society, dated July 07, 2009. The Tenant submitted a copy of the society's constitution which indicates the purpose of the society is to provide residential alcohol and drug treatment. The constitution indicates that during their stay the clients will receive treatment, group and individual counselling, and that they will participate in 12 step meetings.

The Tenant submitted documentation that indicates the second society continued to provide support for people with drug and alcohol addictions. The Tenant submitted a copy of an email from the BC211 Resources Coordinator, in which the coordinator indicated that their records show that they were informed of the existence of the new society in October of 2011.

The Tenant stated that both societies provided group and one-to-one counselling to residents of the rental unit; that prescription drugs were delivered to the clients at the rental unit on a daily basis by medical practitioners; and that employees of the society provided clients with some prescription and non-prescription drugs. The Tenant stated that she informed the Landlord that the rental unit would be used as a "recovery house" prior to the start of the tenancy.

The Agent for the Landlord acknowledged that the Tenant did not reside in the rental unit and that a variety of individuals occupied the rental unit during the tenancy. He stated that he was never told the rental unit would be used for the purposes of a society or that it would be used as a "recovery house", although he understood that the Tenant would be permitting other people to occupy the rental unit. He stated that he is not aware of any services being provided to the occupants of the rental unit.

The Witness for the Tenant stated that he worked as a manager at the rental unit during this tenancy and that he lived there for a period of time. He stated that he was paid to oversee program delivery, which included a "twelve step program", a "relapse prevention program", and anger management and healthy relationship counselling. He stated that he did not dispense medication, although a pharmacy delivered medication to clients on a daily basis. He stated that there was usually about 8 or 9 clients living in the residential complex; that the clients resided at the residential complex for varying periods of time; and that clients could only move into the rental unit if they were attempting to overcome a drug or alcohol addiction.

The Tenant submitted a letter from a pharmacy in which the author declared that "our pharmacy provided medical adherence assistance to the residents".

The Tenant argued that this rental unit does not fall under the jurisdiction of the *Residential Tenancy Act (Act)*, as it was being used as a drug and alcohol "recovery house".

The Agent for the Landlord argued that this tenancy falls under the jurisdiction of the *Act* because the society is not named as the tenant.

The Agent for the Landlord argued that this tenancy falls under the jurisdiction of the *Act* because when they asked for assistance from the police during the tenancy the police advised them that the dispute falls under the jurisdiction of the *Act*.

Analysis

Section 4(g)(vi) of the *Act* stipulates that the *Act* does not apply to living accommodation that is made available in the course of providing rehabilitative or therapeutic treatment or services.

On the basis of the evidence submitted by the Tenant, I find that this was a residential complex that provided living accommodation for individuals while they are receiving treatment for drug and alcohol addictions. I therefore find that I do not have jurisdiction over this residential complex.

Although I accept that the tenancy agreement names an individual as a tenant, I am satisfied this individual was representing a society that was providing accommodations to individuals while they were receiving treatment for drug and alcohol addictions.

In determining this matter I have placed no weight on the Landlord's submission that the police told the Landlord that the tenancy falls under the jurisdiction of the *Act*, as that is a matter that must be determined by the Residential Tenancy Branch.

As I have declined jurisdiction in this matter, I have made no findings or determinations regarding any of the claims made by the Landlord.

Conclusion

As I have declined jurisdiction in this matter, I dismiss the Application for Dispute Resolution in its entirety. The Landlord retains the right to pursue compensation for damages in a court of proper jurisdiction.

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: March 25, 2015

Residential Tenancy Branch

