



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant originally filed her original application on September 29, 2018 and filed an amended application on October 10, 2018. The tenant served the landlord with her application on October 14, 2018 by registered mail. The landlord confirmed service of the tenant's application although she stated that she only received the amended application and not the original. The landlord testified that she did not receive any particulars of the tenant's monetary claim or any evidence in support of the claim until January 25, 2019 (10 days before the hearing date). The landlord testified that an evidence package containing a monetary order worksheet and a disc containing digital evidence was dropped off at her doorstep. The landlord submits the disc contained numerous random pictures and screenshots of text messages.

The tenant confirmed that the monetary order worksheet and digital evidence was delivered to the landlord on January 25, 2019.

Preliminary Issue: Particulars of Tenant's Application and Submitting and Exchanging of Evidence

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Additionally, under Rule 3 of the Residential Tenancy Branch (the Branch) Rules of Procedure, a party submitting evidence must ensure the following:

- Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.
- Evidence is organized, clear and legible (For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2").
- A party submitting digital evidence must include with the digital evidence:
 - a description of the evidence;
 - identification of photographs, such as a logical number system and description;
 - a description of the contents of each digital file;
 - a time code for the key point in each audio or video recording; and
 - a statement as to the significance of each digital file;
- Parties who submit digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must provide the information required under Rule 3.10.1 using *Digital Evidence Details* (form RTB-43).
- Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using *Digital Evidence Details* (form RTB-43).
- The format of digital evidence must be accessible to all parties. Before the hearing, a party providing digital evidence to other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.
- Evidence must be served and submitted as soon as reasonably possible.

If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

I find the tenant's application for monetary compensation (other than request for return of the security deposit) is not in compliance with section 59(2) of the Act as the tenant did not provide the landlord with the full particulars of this aspect of the dispute until only 10 days prior to this hearing.

Additionally, I find that the tenant's evidence was not served in accordance with the requirements of Rule 3 of the Rules of Procedure. The tenant's evidence was not served on the respondent landlord and the Branch at least 14 days before the hearing. The tenant's evidence was not organized. The tenant did not utilize form RTB-43 to provide details of the digital evidence. The tenant did not ensure the landlord has the equipment available to gain access to the digital evidence.

Further I find the tenant unreasonably delayed the service of the evidence and the full particulars of the application to the landlord. The tenant was originally provided with the Application for Dispute Resolution package on October 4, 2018. Due to a scheduling error, the tenant was provided with a new Notice of Hearing on October 11, 2018. The hearing date was changed from the original date of January 29, 2019 to February 4, 2019. The tenant served the landlord with the application with the new hearing date on October 14, 2018. The tenant argued that it was the original scheduling error that caused the delay in serving the evidence to the landlord. I find the tenant's argument is not valid as she had ample notice of the change of hearing date and, if anything, it provided her with an additional 6 days to serve the evidence to the landlord in a timely manner. I find the landlord's ability to respond to the tenant's claim has been prejudiced.

For the reasons provided above, I dismiss the tenant's application for monetary compensation (other than request for return of the security deposit) without leave to reapply.

The hearing proceeded with respect to the tenant's claim for return of the security deposit as I find the landlord was notified in the application that the tenant was seeking return of such.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Background and Evidence

The tenancy began in October 2016 and ended on February 28, 2017. The tenant paid a security deposit of \$200.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant testified that two weeks prior to the end of the tenancy, the landlord was handed a piece of paper with her forwarding address. The tenant testified that the landlord was helping her move her belongings to her new address. The tenant testified that the landlord followed her in her own vehicle and she was provided with the address at this time.

The tenant's son testified that he witnessed the forwarding address being provided to the landlord on a slip of paper.

The landlord argues she was never provided a forwarding address in writing by the tenant. The landlord acknowledged that she helped the tenant move but testified that they went to the tenant's new residence in the same vehicle. The landlord testified that she is aware of the law and that she would have immediately filed an application to claim against the deposit for damages had a forwarding address been provided in writing as required. The landlord submits that the tenant did not provide a forwarding address within one year of the end of the tenancy.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

Section 39 of the Act provides that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit and/or pet damage deposit and the right of the tenant to the return of the security deposit and/or pet damage deposit is extinguished.

The onus is on the tenant to prove that a forwarding address was provided to the landlord in writing. The parties provided conflicting testimony with respect to whether or not a forwarding address was provided. I find the tenant provided insufficient evidence of providing a forwarding address in writing to the landlord. The tenant has not provided a copy of any formal letter written to the landlord requesting a return of the security deposit and that a forwarding address was being provided for that purpose. I find that even if the tenant did provide an address on a piece of paper to the landlord as alleged during the process of moving her belongings, it was provided solely for the purpose of providing directions to the landlord who was assisting her move rather than as a formal request for the security deposit.

I also find that a written forwarding address was not provided within one year after the end of the tenancy and as such the tenant's right to a return of the deposit is extinguished.

I dismiss the tenant's claim for return of the security deposit without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety without 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: February 04, 2019

Residential Tenancy Branch