



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNSD FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The Tenants both gave affirmed evidence.

This is the Tenants’ application for:

- A monetary order for double the security deposit under section 38 of the Act; and
- Recovery of the filing fee of this application under section 72 of the Act.

Issue(s) to be Decided

- (1) Should the Tenants be successful in their application for a monetary order for double the security deposit; and if so
- (2) Should the Tenants recover the cost of the filing fee for this application from the Landlord?

Background and Evidence

The Tenants testified that they mailed the Application for Dispute Resolution filed December 29, 2008, together with the hearing package and copies of their evidence, to the Landlord by registered mail on December 30, 2008. The Tenants provided a Canada Post Tracking number.

A search of the Canada Post tracking system confirms the following:

- The documents were accepted for delivery on December 30, 2008.
- Delivery was attempted on December 31, 2008. A notice was left indicating where the item could be picked up.
- The documents were available for pick-up at the post office on January 2, 2009.
- The documents were unclaimed as at January 19, 2009.
- The documents were returned to the sender on January 20, 2009.

The Tenants provided the following evidence:

- A copy of the front and back of the returned registered mail envelope, marked “unclaimed”. The envelope is addressed to the Landlord at his residential address.
- A copy of an e-mail dated March 17, 2008 from the Tenants to an e-mail address that the Tenants allege belongs to the Landlord.
- A copy of an e-mail dated March 22, 2008 from the Tenants to the same e-mail address that the Tenants allege belongs to the Landlord.
- A copy of an e-mail dated November 13, 2007, from the e-mail address alleged to belong to the Landlord, to the Tenants.

The Tenants testified that they moved in to the rental unit of November 1, 2007. The Tenancy ended in March, 2008. The Tenants testified that they paid a security deposit in the amount of \$840.00 to the Landlord on October 16, 2007.

The Tenants testified that the Landlord did not conduct, nor provide an opportunity to conduct) a move-in inspection or a move-out inspection of the rental unit.

The Tenants testified that on March 17, 2008, by way of e-mail (a copy of which is in evidence on the case file) they requested return of the damage deposit. The Tenants testified that they made the same request on March 22, 2008. The Tenants testified that the e-mail address they sent the request to is the same e-mail address from which

they received previous e-mails from the landlord. To date they have not received the damage deposit from the Landlord and are requesting a monetary order for double the amount of the damage deposit.

Analysis

At the Hearing, I granted the Applicants' application. However, on a review of the pertinent sections of the Act, e-mail is not an acceptable method of serving a landlord with a tenant's forwarding address. Notice of a tenants' forwarding address must be in writing, pursuant to section 38 of the Act, and provided to the landlord pursuant to section 88 of the Act.

A copy of sections 88 and 38 is included at the bottom of my decision.

Conclusion

The Tenants' application is dismissed with leave to re-apply.

January 29, 2009

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is

a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1)
[director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations.

Return of security deposit and pet damage deposit

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 use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.