



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, OLC, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenants. The Landlord’s Application requested a monetary order for damage to the unit, site or property, compensation for damage or loss, recovery of the filing fee, and an order to keep all or part of the security deposit. The Tenants’ Application requested an order to for the Landlord to comply with the Act, regulation, or tenancy agreement, and a monetary order for the security deposit, compensation for damage or loss and the filing fee.

The Landlord and Tenants attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Landlord confirmed that they had received the Tenants’ Application for dispute resolution and the hearing notice package.

The Tenants stated that they were not served by the Landlord with an Application for dispute resolution. The Landlord’s agent MN attended the hearing and stated that she had no knowledge of how the Tenants were served or whether the Tenants were served with the Landlord’s Application as someone at her head office took care of this. The Landlord’s agent provided no proof of service into evidence.

Section 59(3) of the Act requires that the applicant serve the respondent (in this case the Tenants) with the Application, which includes the Notice of Hearing, within three days. Section 89 of the Act, provides specific rules for the service of the Application for dispute resolution package. Section 89 of the Act states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord did not provide any evidence to confirm how their Application was served or if it was served on the Tenants. In the absence of evidence to the contrary, I accept the Tenants' testimony that they were not served with an Application by the Landlord. As a result, I find that the Landlord failed to serve their Application on the Tenants.

The Landlord's Application is dismissed with liberty to reapply.

The hearing proceeded and only the Tenants' Application was heard.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The parties agree that the Tenants' paid a security deposit of \$500.00 when the tenancy commenced on May 07, 1995. The parties agree that the monthly rent was \$1,295.00 per month. The parties agree that the tenancy ended on November 30, 2011. The parties did not provide a copy of the tenancy agreement into evidence. The Tenants are seeking return of the security deposit in accordance with the Act.

The Tenants stated that they moved out of the rental unit by November 30, 2011 and that the Landlord's agent WO was supposed to meet them at the rental unit at 11:30 on November 30, 2011 for a move-out inspection, but failed to show up. The Tenants stated that a move-out inspection was not done with the Landlord as agent WO advised them he was too busy. The Tenants stated that the Landlord's agent WO advised them to leave their keys and their forwarding address in writing in the Landlord's mailbox. The Tenants stated that they provided the keys and the forwarding office to the Landlord's agent as requested by leaving it in the Landlord's office mailbox. The Tenants stated that they phoned the Landlord's agent WO several times to request the cheque but it was not provided. The Tenants stated that the Landlord's agent WO told

them that he received their keys but he had lost their forwarding address, so they provided it to him again and he promised to send the cheque for December 21, 2011. The Tenants stated that they still did not receive their security deposit; as a result they filed for dispute resolution on December 28, 2011.

The Landlord's agent MN was the only person who attended the hearing on behalf of the Landlord, and she stated that she became the resident manager at the building on December 28, 2011, after the tenancy ended. MN stated that she does not have all of the records and does not have a copy of the tenancy agreement although she agrees it would have started May 07, 1995. MN stated that she does not know what communications occurred between WO and the Tenants, and stated that WO is a manager for the Landlord who deals with several properties. MN stated that the Landlord did receive the keys but she has no record of any forwarding address for the Tenants. MN stated she has no records of any attempts to do the move-out inspection. MN stated that the Tenants did not pay for carpet cleaning. MN confirmed that the carpets were old and had to be replaced in the rental unit. MN confirmed that the Landlord has not returned the security deposit at this time. MN confirmed that the Landlord does not have written consent from the Tenants for deductions for the carpets and that no move-out inspection was done.

The Tenants stated that the carpets in the rental unit were old and that WO had advised them that he was replacing the carpets due to their age and that they would receive return of the full amount of their deposit. The Tenants stated that they did not authorize the Landlord to make any deduction from their deposit. The Tenants are seeking return of double the amount of the security deposit of \$1,000.00 (\$500.00 x 2) plus interest on the security deposit and the filing fee.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

I accept the testimony of the parties that the Landlord holds a security deposit of \$500.00 which the Tenants paid to the Landlord on May 07, 1995. I accept the Tenants' testimony that they provided their forwarding address to the Landlord in writing on November 30, 2011, as the Landlord has provided insufficient evidence to contradict this testimony. Additionally, the Landlord's application of January 05, 2012 demonstrates that they have the Tenants' forwarding address from the Tenants' application as well. As stated in the preliminary findings, the Landlord failed to serve

the application on the Tenants. The Landlord provided no evidence to support that the security deposit has been returned to the Tenants as required by the Act.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

When a Landlord fails to properly complete a condition inspection report, the Landlord's claim against the security deposit for damage to the property is extinguished. Because the Landlord in this case did not carry a move-out condition inspection report with the Tenants, as required by section 35 of the Act, they lost their right to claim the security deposit for damage to the property. The Landlord was therefore required to return the security deposit to the Tenants within 15 days of the later of either the tenancy ending or having received the Tenants forwarding address in writing.

I find that the Landlord's right to claim against the security deposit was extinguished, and they failed to return the Tenants' security deposit within 15 days of having received the Tenants' forwarding address. As a result, section 38 of the Act requires that the Landlord pay the Tenants double the amount of the deposits for a total of \$1,000.00 (\$500 x 2). As the security deposit of \$500.00 was paid to the Landlord on May 07, 1995, it has accrued interest in the amount of \$96.27. I find that the Tenants are entitled to a monetary order for \$1,096.27 representing the security deposit interest and double the amount of the security deposit.

As the Tenants have succeeded in their Application, I find they are entitled to recover their \$50.00 filing fee for this Application. As a result, the Tenants are entitled to a monetary order against the Landlord in the total amount of \$1,146.27.

Conclusion

The Landlord's application is dismissed with liberty to reapply.

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of \$1,146.27, comprised of double the security deposit (\$500.00 x 2), interest of \$96.27 on the security deposit, and the \$50.00 filing fee.

The Tenants are granted a monetary order for **\$1,146.27** and the Landlord must be served with a copy of this order as soon as possible. Should the Landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The order is attached to the Tenants' copy of this decision

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 15, 2012.

Residential Tenancy Branch