Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNDC MNR MNSD FF
CNR MNR MNSD OLC FF

Preliminary Issues

Landlords' Application

At the outset of this proceeding the Landlords affirmed that they did not serve the Tenants with copies of their application or their evidence because they did not have a forwarding address for the Tenants.

Section 59(3) of the *Residential Tenancy Act (*the *Act)* stipulates in part, that except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 89 of the *Act* provides methods of service for applications for Dispute Resolution while section 88 of the *Act* provides methods of service for evidence and other documents that a required to be served by the *Act.*

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights.

In this case the Tenants were not served a copy of the Landlords' application or their evidence; therefore, I found those documents were not served in accordance with sections 58, 88, or 89 of the *Act.* Accordingly, I dismissed the Landlord's application, with leave to reapply, and I continued the hearing to hear matters pertaining to the Tenants' application.

Tenants' Application

The undisputed evidence was the Tenants filed their application for Dispute Resolution on July 06, 2015, at which time their tenancy was in full force and effect. The Tenants vacated the rental unit as of July 31, 2015 at which time their tenancy ended.

Section 17 of the *Act* provides that a landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

The *Regulation Schedule* 2(1)(b) stipulates, in part, that the landlord agrees to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

Based on the above, I find the Tenants' application filed July 06, 2015 for return of their security deposit was filed premature as their tenancy had not yet ended. Accordingly, I dismissed their request for the return of their security deposit, with leave to reapply.

In regards to the Tenants' requests to cancel a Notice to end tenancy for unpaid rent and an Order to have the Landlords comply with the Act, regulation or tenancy agreement, I conclude these requests are now moot and are dismissed, without leave to reapply, as this tenancy ended July 31, 2015, pursuant to section 44(1)(d) of the *Act.*

Introduction

This hearing proceeded to hear matters pertaining to the Tenants' application for Dispute Resolution seeking to obtain a Monetary Order for the cost of emergency repairs paid for by the Tenants and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony regarding service and receipt of applications and documentary evidence. A detailed review of evidence received by the Landlords was conducted during the hearing.

The Tenants testified that they served the Landlords two packages of evidence, one package with their application via registered mail and the second package was sent via regular mail. The Tenants were not able to submit testimony of when their second package of evidence was sent other than to say it was sent sometime in mid to late August 2015. The Monetary Order Worksheet and department store receipt were submitted in the second package of evidence and not the first package..

The Landlords testified that they received only one package from the Tenants which included the application and Notice of hearing documents. The Landlords asserted that they did not receive a copy of the Tenants' Monetary Order Worksheet nor did they receive a copy of the department store receipt.

Residential Tenancy Branch Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.17 stipulates that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

Based on the above, and in absence of documentary evidence to prove the contrary, I accept the Landlords' submissions that they were not in receipt of a copy of the department store receipt. Therefore, I declined to consider that department store receipt as evidence. I did however; consider all other documentary evidence that was received by the Landlords and the Residential Tenancy Branch (RTB) from the Tenants; and all oral submission from the Tenants and the Landlords, pursuant to Rule of Procedure 3.17.

During the hearing each party was given the opportunity to provide their evidence orally, to ask questions, and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation in accordance with the *Act?*

Background and Evidence

The undisputed evidence included that the Tenants entered into a month to month tenancy agreement which began on October 1, 2014. Rent of $1,200.00 was payable on the first of each month. Sometime in October 2014 the Tenants paid $600.00 as the security deposit.

Both parties were represented at the move in and move out inspections. A move in condition inspection report was signed on or around October 1, 2014 and the move out report was signed on July 31, 2015.

The Tenants testified that the deadbolt lock on the rental unit entrance door broke on January 1, 2015. They argued that the lock was not in good shape throughout their tenancy as it was always difficult to lock.

The Tenants submitted that they initially thought they were responsible for the cost to replace the lock. They told the Landlord it broke at which time she told them she would reimburse them for the cost to replace it.

The Tenants purchased a new deadbolt on January 1, 2015 and installed it. They emailed the Landlord and sent them a scanned copy of the receipt. They now seek to recover $45.00 for the cost of the new lock.

The Landlords testified that they recalled having that conversation with the Tenants where they told them they would reimburse them for the cost of the lock. The Landlords stated that they also told the Tenants they needed a copy of the key for the new lock and that one was never provided to them until the Tenants moved out on July 31, 2015.

The Landlords submitted that they did not recall ever receiving a copy of the receipt by email. They stated that if the Tenant could find that email during the hearing then they would confirm that they received it.

The Tenants were given an opportunity to search for the aforementioned email during the hearing; however, they were not successful in finding it. The Tenants argued that it was difficult in getting things to the Landlords as they were residing out of town. They argued that they never refused to give them a copy of the key and it was not raised as an issue at that time.

The Landlords submitted that the Tenants knew the Landlord’s parents were their legal representatives regarding matters pertaining to this tenancy. Therefore, the Tenants should have given a copy of the key to their parents. The Landlords confirmed that they never requested the Tenants to give a copy of the key to their parents; nor did they ask their parents to get a copy from the Tenants.

In closing the Landlords stated that they told the Tenants to replace the lock and if they received a copy of the key they would reimburse them.

The Tenants provided a new address at the end of this hearing which is recorded on the front page of this Decision. The Landlords asked the Tenants if that address was their new service address where the Landlords could serve documents to them. The Tenants confirmed that address was their new service address.

Analysis

The *Residential Tenancy Act* (the *Act),* stipulates provisions relating to these matters as follows:

Section 33(1)(b) of the *Act* defines **"emergency repairs"** as being necessary for the health or safety of anyone or for the preservation or use of residential property.

Section 33(1)(c)(iv) of the *Act* stipulates that emergency repairs include repairs made for the purpose of repairing damaged or defective locks that give access to a rental unit.

Section 33(5) of the *Act* provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

> (a) claims reimbursement for those amounts from the landlord, and
>
> (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence was the deadbolt lock on the entrance door broke on January 1, 2015. The Tenants informed the Landlords of the broken lock and the Landlords requested that the Tenants replace the lock.

The Tenants were not able to prove the Landlords were served a copy of the department store receipt as evidence for this dispute. The Tenants alleged that they sent the Landlords an email copy of the receipt; however, the Tenants were not able to find a copy of that email. The Landlords disputed that they received an email because they could not recall receiving a copy of the receipt.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of

events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Based on the above, I find the Tenants submitted insufficient evidence that the Landlords were provided a copy of the lock receipt, as required by section 33(5) of the *Act.* Accordingly, I find there was insufficient evidence to meet the burden of proof to establish the Tenants' claim for $45.00. Therefore, the $45.00 claim is dismissed, without leave to reapply.

The Tenants were not successful with their application; therefore, I decline to award recovery of their filing fee.

Conclusion

The Landlords were not able to prove service so their application was dismissed in its entirety, with leave to reapply.

The Tenants' request for the return of their security deposit was premature and was dismissed, with leave to reapply. The Tenants were not successful with the balance of their application which was dismissed 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: September 09, 2015

Residential Tenancy Branch