



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF, SS

Introduction

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

- a monetary order for 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 their security deposit pursuant to section 38;
- an order requiring the landlords to comply with the Act, regulation or tenancy authorization to serve documents or evidence in a different way than required by the Act pursuant to section 71; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The tenants' application is for return of double their security deposit pursuant to subsection 38(6) of the Act.

The tenant JC (the tenant) attended the hearing on behalf of both tenants. The landlord RF (the landlord) attended the hearing on behalf of both landlords. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issue – Service

The tenant testified that the tenants' dispute resolution package was served to the landlords on or about 13 August 2015 by registered mail. The landlord admitted receipt of the tenants' dispute resolution package.

The landlords did not serve their evidence to the tenants.

Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) sets out that a respondent must receive evidence from the applicant not less than 7 days before the hearing. In accordance with rule 3.15, the last day for the landlords to file and serve additional evidence in reply to the tenants' application was 12 January 2016.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the tenants have not had the opportunity to examine any of the landlords' evidence. On the basis that it would be unduly prejudicial to the tenants, the landlords' evidence is excluded. The parties were informed of this decision at the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of a portion of their security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the Act? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the witnesses, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

On or about 11 April 2015, the tenants provided a security deposit to the landlords in the amount of \$2,875.00. In early to mid-April 2015, the tenants and landlord entered into a written tenancy agreement. The tenancy agreement purported to cover a tenancy beginning 1 May 2015 at a monthly rent in the amount of \$5,750.00. The tenant confirmed the tenants received a copy of this tenancy agreement by electronic mail.

The tenants' occupation of the rental unit did not begin.

On 24 June 2015, the tenants sent their forwarding address to the landlord RF. The tenants delivered their forwarding address by electronic mail. The tenant submitted that she served the landlord by electronic mail because this was the method the parties were using to communicate. The landlord confirmed that he received the tenants'

forwarding address, but did not consider that any obligations arose on the landlords' behalf as a result of the address's delivery.

The tenant was not sure where the tenants found the landlords' address for service. The landlord testified that the landlords' address for service was contained in the tenancy agreement.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

Section 88 of the Act sets out how documents may be delivered. Electronic mail is not an acceptable method of service pursuant to section 88 of the Act. As the tenants provided their forwarding address by electronic mail to the landlords and the landlords did not understand that any obligation on their part was triggered by this delivery, the tenants have not provided the landlords with the tenants' forwarding address in writing. As such, I dismiss the tenants' application as their claim is premature.

The tenants may file another claim when they provide the landlords with the tenants' forwarding address in accordance with both section 38 and section 88. This leave to reapply is not an extension of any time limit under the Act.

Conclusion

The tenants' application is dismissed. The tenants may reapply after their claim has crystallized.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 22, 2016

Residential Tenancy Branch

