Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord, JL (the "landlord") testified that he and the other named landlord were spouses when the tenancy agreement began. The marital relationship ended before the end of the tenancy but the landlords did not inform the tenants and the female landlord is named as a respondent in the present action. The landlord testified that he does not speak for his former spouse, the other named landlord.

The tenants testified that a single copy of the application for dispute resolution dated December 15, 2016 (the "Application") and evidentiary materials was sent to both landlords on that date by registered mail sent to the landlords' address for service listed on the tenancy agreement. Additionally, the tenants testified that they sent a copy of their Application by registered mail to a work address where they knew the other named landlord, TT was employed, and a copy was personally delivered to the dispute address and handed to a building caretaker. The landlord confirmed receipt of a copy of the tenants' Application package. Pursuant to section 89 and 90 of the *Act*, I find that the landlord was served with the tenants' Application package at the service address listed in the tenancy agreement on December 20, 2016, five days after mailing. I find that as only a single copy of the tenants' Application was mailed to the landlord's address for service the landlord, TT was not served according to the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value 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

The parties agreed on the following facts. This month to month tenancy began in April, 2012. By the end of the tenancy, the monthly rent was $1,200.00 payable on the first of each month. A security deposit of $600.00 was paid at the start of the tenancy and is still held by the landlord. A condition inspection report was not prepared at the start of the tenancy.

The landlord was unfamiliar with what was entailed in a condition inspection report. The landlord testified that the landlord, TT would customarily walk prospective tenants through the rental unit prior to entering into the tenancy agreement. The landlord testified that it was not a part of his customary practice to prepare a written condition inspection report.

The landlord testified that he lives outside of the country and did so throughout the term of the tenancy. Consequently, most communication with the tenants was conducted through email or by the landlord, TT who lives in the province. The parties testified that the monthly rent payment was made by wire transfer or internet banking to the landlord's bank account.

The tenants testified that they informed the landlords of their intention to end the tenancy at the end of March, 2016 by a letter dated January 21, 2016. The tenants testified that they did not regularly use email to communicate with the landlord towards the end of the tenancy as they found the volume and tone of the communications to be off-putting. The tenants testified that they sent the letter by registered mail to the landlord's service address as listed on the tenancy agreement. This letter was later returned to the tenants as unclaimed.

The tenants testified that they moved out at the end of March, 2016. A condition inspection report was not completed at the end of the tenancy. The tenants testified that after moving out of the rental unit they provided a forwarding address in writing by a

letter dated June 1, 2016, sent by registered mail to the landlords' service address. This letter was returned to the tenants as unclaimed.

The landlord testified that he hired a building manager in December, 2015 and the tenants were informed by email that the building manager was an agent of the landlords. The landlord argues that he was not informed in writing of the tenants' intention to end the tenancy, or their forwarding address. The landlord says that the tenants should have contacted him through email, as was the standard practice, or through the building manager. The landlord testified that he and the other named landlord did not see a need to inform the tenants about the end of their marital relationship, nor did they change the landlord's address for service from that written on the tenancy agreement. The landlord also argues that he is entitled to retain the security deposit due to damage and loss suffered by the landlord as a result of the tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a), or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy pursuant to section 38(3)(b).

While the landlord acknowledged that he has kept the $600.00 security deposit and has not applied for dispute resolution following the conclusion of the tenancy, he argues that he was never provided a copy of the tenants' forwarding address in writing.

The landlord provided copies of emails he sent the tenants in December, 2015 informing them that he has hired a building manager. The email announcement from the landlord reads in part:

> I've made [L] my property manager for the past months. However, I am only making the announcement now, as I haven't been able to find a most suitable time.
> I've asked her to help me find a service man to:

1. Fix the refrigerator
2. Cleaning/maintain the washer and dryer set in the basement.

Please support her, as it'll benefit all 3 parties

The email is copied to the property manager. The landlord testified that the tenants knew the phone number and email address of the property manager. Based on the content of the notice I do not find that the landlord has sufficiently informed the tenants that they are to deal with the property manager for tenancy issues. The email notice implies that the building manager is empowered to deal with narrow issues of maintenance. The parties have testified that rent payment continued to be paid to the landlord's bank account and the landlord continued to communicate with the tenants after the property manager was hired. I find that based on the conduct of the landlord, it is unclear that the tenants should communicate through the property manager. Simply announcing that a property manager has been hired is insufficient notice that the tenants are supposed to send notices to end tenancy and forwarding address to this new contact especially when the landlord continues to deal directly with the tenants for some matters.

Section 88 of the *Act* provides the manner in which documents are to be served. The section reads in part:

> **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;

The tenants provided their forwarding address to the landlords by registered mail sent to the landlord's address for service. I find that the tenants served their notice of forwarding address in accordance with the *Act*. The *Act* provided the tenants with

options for how the landlord could be served and they chose to utilize a method prescribed in the *Act*, registered mail to the landlord's address. I do not accept the landlord's argument that the tenants ought to have provided their forwarding address through the building manager. The Act allows for service in one of the prescribed ways. The landlords are responsible for informing the tenants of a change in service address or if a method is no longer a viable way to contact them.

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address or following the conclusion of the tenancy. If the landlords had concerns arising from the condition of the rental unit, the landlord should have addressed these matters within 15 days of receiving a copy of the tenants' forwarding address or within 15 days of the end of tenancy. It is inconsequential if repairs to the rental unit were required, if the landlords do not take action to pursue this matter. The landlords cannot decide to simply keep the damage deposit as recourse for their loss.

The parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

> 24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> …
>
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I find that the landlords have extinguished their rights to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Pursuant to section 38(6)(b) of the *Act*, the landlord is required to pay a monetary award equivalent to double the value of the security deposit. I am issuing a Monetary award in the tenants' favour in the amount of $1,200.00 for this item.

As the tenants were successful in their application, they are entitled to recovery of the $100.00 filing fee.

As I have found that only the landlord, JL has been served with the tenants' Application in accordance with the *Act* these orders are only enforceable against the landlord, JL and not the landlord, TT.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of $1,300.00 against the landlord, JL. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The application against Landlord TT is dismissed with 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 10, 2017

Residential Tenancy Branch