



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by conference call in response to the Tenants' Application for Dispute Resolution (the "Application") filed on April 30, 2017 for the return of the security deposit and to recover the filing fee from the Landlord.

One of the Tenants appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Landlord during the 24 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenants.

The Tenant testified that they served the Landlord with a copy of the Application and Hearing Package to the service address detailed on the mutual agreement to end the tenancy. This was done by registered mail on May 11, 2017. The Tenants provided the Canada Post tracking number into evidence to verify this method of service. The Tenant testified that the documents were returned back to him by Canada Post and were marked as being unclaimed.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail.

I accept the Tenants sent the documents to a service address where the Landlord was able to receive documents, as verified by the address appearing on the mutual agreement to end this tenancy. Based on the undisputed evidence before me, I find the Landlord was deemed served with the required documents on May 16, 2017 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Tenants as follows.

Issue(s) to be Decided

Are the Tenants entitled to the return of their security deposit and recovery of the filing fee?

Background and Evidence

The Tenant testified that this tenancy for the rental unit started on May 1, 2010 on a month to month basis. The Tenant was unable to confirm what the monthly rent was for this tenancy, as he only made a contribution to this as a Co-Tenant, but confirmed that \$1,500.00 was paid to the Landlord at the start of this tenancy as a security deposit.

The Tenant explained the tenancy was ended on May 1, 2016 by mutual agreement. The mutual agreement signed on March 31, 2016 was provided into evidence and shows the Landlord's service address.

The Tenant testified that they attempted to work with the Landlord on the amount to be returned by the Landlord from the security deposit after the tenancy had ended. The Tenant explained that they had consented to allow a deduction but only for a smaller amount being proposed by the Landlord. However, the Landlord did not get back to the Tenants regarding their proposed deduction and the Tenant stated that their offer was rescinded as the Landlord did not confirm it.

The Tenant testified that on August 17, 2017 the Tenants emailed the Landlord with their forwarding address for the return of their security deposit. The email was printed off and also sent to the Landlord's service address by registered mail on the same day. The Tenants provided the Canada Post tracking number into evidence to verify this method of service.

The Tenant testified that the Landlord replied to the August 17, 2017 email which contained the Tenants' forwarding address but failed to agree to their proposed deductions.

The Tenants now claim double the amount of \$3,000.00 for the Landlord's failure to deal properly with their security deposit. The Tenant confirmed that no written or express consent was given to the Landlord for any agreed deductions to be made or the keeping of the entire amount.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or file an application to claim against it. Section 38(4) (a) of the Act also provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on May 1, 2016 by mutual agreement pursuant to Section 44(1) (c) of the Act.

While email is not a recognized form of serving documents under the Act, I accept the Tenant's undisputed oral testimony and email correspondence that the Landlord was put on notice of the Tenants' forwarding address on August 17, 2016. This is because the Landlord replied to that email on the same date which satisfies me that the Landlord was aware of the address.

Furthermore, I accept the undisputed evidence that the Tenants also served the Landlords with their forwarding address by mail pursuant to Section 88(c) of the Act.

Therefore, the Landlord would have had 15 days from August 17, 2016 onwards, to deal properly with the Tenants' security deposit pursuant to the Act. There is no evidence before me that the Landlord filed an application within the 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenants to withhold it. Therefore, I must find the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenants by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act.

It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on the foregoing, I find the Tenants are entitled to double the return of their security deposit in the amount of \$3,000.00.

As the Tenants have been successful in this Application, I also grant the \$100.00 filing fee pursuant to Section 72(1) of the Act. As a result, the Tenants are issued with a Monetary Order for a total amount of \$3,100.00.

This order must be served on the Landlord and may be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. Copies of the order are attached to the Tenants' copy of this Decision. The Landlord may also be held liable for any enforcement costs incurred by the Tenants in obtaining the relief owed.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenants' security deposit. Therefore, the Tenants are granted a Monetary Order for \$3,100.00 which comprises double the security deposit and the Tenants' filing fee.

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

Dated: October 03, 2017

Residential Tenancy Branch