



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled to deal with a tenant's application for return of double the security deposit. One of the co-tenants appeared at the hearing and an agent appeared on behalf of the landlord. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Issue -- Naming of parties

The tenants had named a person referred to by initials RC as being the landlord in filing this Application for Dispute Resolution. RC is named as the landlord on the tenancy agreement and dealt with tenancy related matters during the tenancy. RC did not appear at the hearing. Rather, a person referred to by initials AKD appeared and stated he was the partner of the registered owner of the property and had a beneficial interest in the property. AKD stated he should be named as landlord. The tenant questioned the standing of AKD as a landlord. I heard that the person who held the registered ownership in the property is referred to by initials VT and RC acted as the property manager during the tenancy. The parties referred to two previous dispute resolution proceedings (file numbers referenced on the cover page of this decision). In the first proceeding the tenants had named RC and VT as landlords but there was no appearance on part of the landlords at that hearing. In the second proceeding, the tenants had named VT as the landlord and AKD appeared at that hearing as agent for VT.

Residential Tenancy Branch

#RTB-136 (2014/12)



Section 1 of the Act provides for the definition of a landlord. Section 1 provides the definition of landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

For this case, the tenant testified that he gave the hearing documents to RC, in person at RC's residence, on November 3, 2017. AKD testified that he received the hearing documents from RC. I was satisfied that RC was duly served with the hearing package and based on the consistent statements of the tenant and AKD and upon review of the tenancy agreement, I find RC meets the definition of a landlord under section 1 of the Act. Accordingly, I left RC named as a landlord on this decision.

Considering AKD received the hearing documents from RC and that he appeared at a previous dispute resolution proceeding where VT was named as landlord, I accepted that AKD meets the definition of the landlord as he acts on behalf of the owner. With consent of both parties during the hearing I added AKD as a landlord and since AKD acknowledged receipt of the hearing documents from RC I deemed AKD to be sufficiently served with the hearing documents pursuant to the authority afforded me under section 71 of the Act.

The landlord referred to as VT was not named by the tenants in filing this Application for Dispute Resolution, VT was not served with the hearing documents; and, VT did not

appear at the hearing. Accordingly, I did not amend the application to name VT as landlord even though he meets the definition of landlord.

As for the naming of the female tenant, I noted that her last name that appears on this Application for Dispute Resolution and the tenancy agreement is different. The tenant explained that when the tenancy started she used a different last name and when this Application for Dispute Resolution was filed her current last name was used. I amended the application to include the female tenant's name as it appears on the Application for Dispute Resolution and on the tenancy agreement.

Preliminary Issue – Service of evidence

The landlord AKD confirmed receipt of supporting documents and evidence with the tenant's Application for Dispute Resolution. Accordingly, I admitted and considered the tenants' documentary evidence.

The landlord had uploaded two pieces of evidence to the Residential Tenancy Branch service portal. I heard from AKD that these documents were sent to the tenants via regular mail using the service address appearing on the tenant's Application for Dispute Resolution. The tenant denied receiving the landlord's documentary evidence. The landlord stated that he also attempted to serve the evidence to the tenants by way of a courier company but that he was informed the tenants' service address was not valid. Upon review of the service address that appears on the tenants' Application for Dispute Resolution, the tenant confirmed that the postal code appearing in the service address is incorrect but was of the position that would not have prevented delivery of documents to the service address. In any event, I was unsatisfied that the tenants are in receipt of the landlord's documentary evidence and I did not admit the landlord's documentary evidence or give it further consideration.

Issue(s) to be Decided

Have the tenants established an entitlement to return of double the security deposit?

Background and Evidence

The tenancy started on June 1, 2011 and ended on August 31, 2017 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants had paid a security deposit of \$800.00. The landlords did not prepare move-in or move-out inspection reports. The tenants did not provide the landlords with written authorization

to retain the security deposit. The landlords continue to hold the security deposit and have not yet filed an Application for Dispute Resolution to retain any part of it.

The tenant testified that he delivered a document containing the tenants' forwarding address to RC's wife at RC's place of business, a lottery counter in a grocery store, on September 19, 2017. The tenant stated that RC's wife took the document, indicating she would give it to RC, and that shortly afterward RC called the tenant and informed the tenant he would not be receiving a refund of the security deposit for monies spent on cleaning the rental unit. The tenant was not in agreement that cleaning was needed. When a refund was not received the tenants proceeded to file this Application for Dispute Resolution on November 3, 2017. The tenants provided a copy of the tenancy agreement and the September 19, 2017 document containing the forwarding address as evidence for this proceeding.

The landlord AKD testified that when he spoke with RC, RC told him he had not received the document containing the forwarding address. AKD acknowledged that the document containing the forwarding address was included with the documents that accompanied the tenants' Application for Dispute Resolution but that it had not been seen before that. The landlord pointed out that the document dated September 19, 2017 does not provide for signature of the person who allegedly received it.

The landlord stated that the landlord spent approximately the amount of the security deposit on cleaning up the rental unit after the tenancy ended and before the property was transferred to the new owners. The tenant objected to such allegations. I did not permit the parties to provide further evidence on that matter since there are no claims before me filed by the landlords. I informed the parties that if the landlords seek to retain the security deposit or obtain compensation from the tenants, the landlords must obtain the tenant's written consent to do so or file an Application for Dispute Resolution and make a claim for compensation against the security deposit. The parties were informed that the landlords still have the right to make a monetary claim against the tenants, if they so choose to pursue that right.

During the hearing I orally provided the parties with my decision. The tenant argued that even if I do not accept that the landlord received their forwarding address on September 19, 2017 that it was received with the hearing package delivered on November 3, 2017 and that since the landlord did not take action with respect to the security deposit upon receiving the hearing package the security deposit should still be doubled. I have considered this argument in the analysis section of this decision.

Analysis

As provided in section 38(1) of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit pursuant to section 38(6) of the Act.

Where a tenant makes a claim for return of the security deposit, the tenant bears the burden to prove that a written forwarding address had been provided to the landlord. Until a landlord receives a forwarding address in writing the landlord is not required to take action with respect to the security deposit and a tenant's application for return of the security deposit before giving the landlord a written forwarding address is premature.

In this case, the parties were in agreement that the tenancy ended on August 31, 2017; however, the parties were in dispute as to whether the tenants had provided a forwarding address to the landlord in writing before filing this Application for Dispute Resolution. The tenant provided a copy of a document dated September 19, 2017 that contains a forwarding address for the tenants; however, the parties were in dispute as to when this document was provided to the landlord.

The tenant testified that the document dated September 19, 2017 was given to the wife of RC on September 19, 2017. There is no signature or other receipt to demonstrate the document was given to this person. Even if it was given to the wife of RC, I proceed to consider whether this method of service complies with section 88 of the Act. Section 88 provides for ways to serve a document, as follows:

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;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71
- (1) *[director's orders: delivery and service of documents]*;
- (j) by any other means of service prescribed in the regulations.

I was provided no indication from either party that the wife of RC was a landlord or agent for the landlord for the subject property or tenancy. Nor, did the tenant deliver the document to the residence of RC and leave it with an adult at RC's residence. As such, I find the tenants failed to demonstrate that the document containing the tenants' forwarding address was served upon the landlord or agent for the landlord in a manner that complies with section 88 of the Act. Therefore, I find I am not satisfied that a written forwarding address was served upon the landlord or landlord's agent before the tenants made this Application for Dispute Resolution and I find that it was filed prematurely.

Although the landlord's agents received a forwarding address for the tenant along with the tenants' Application for Dispute Resolution, it is the tenant's obligation to provide the address in a separate, earlier document and where the tenant makes an application for

return of double the security deposit the landlord may contemplate attending the hearing to dispute receipt of the forwarding address on an earlier occasion, which is what happened in this case. Therefore, I do not consider ordering the landlords to pay the tenants return of double security deposit when the originating application was filed prematurely as to do so would be procedurally unfair.

As I informed the parties during the hearing, **the landlord is considered to be in receipt of the tenant's written forwarding address as of the date of the hearing and the landlord has 15 days from the date of the hearing to deal with the security deposit in one of the ways permitted under section 38(1) of the Act. If the landlords fails to do so, the tenants are given leave to reapply and request doubling of the security deposit.**

The forwarding address for the landlords to use to either refund the security deposit or serve a Landlord's Application for Dispute Resolution is that provided on the document dated September 19, 2017 and included in the documentary evidence served with the Tenant's Application for Dispute Resolution.

Conclusion

The tenant's Application for Dispute Resolution was filed prematurely. The landlords have 15 days from the date of the hearing to take action with respect of the security deposit in a manner that complies with section 38(1) of the Act. Should the landlords fail to do so the tenants may reapply and seek doubling of the security deposit.

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: June 08, 2018

Residential Tenancy Branch