



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL –S, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the tenants' security deposit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary Issue – Naming of tenant

The tenant pointed out that the landlord had reversed his first and middle name in filing her Application. I have amended the style of cause to reflect to correct order of the tenant's name.

Preliminary Issues – Service of hearing documents and evidence

It was undisputed that the landlord sent a proceeding package to the tenants at their forwarding address via registered mail on May 9, 2019. The tenants received these packages. These packages did not include a Monetary Order worksheet or any evidence.

The landlord testified that she left a package in front of the door of the tenants' forwarding address on July 30, 2019 and "somebody" opened the door and picked up the package shortly thereafter although the landlord could not see who picked up the package. The landlord testified that the package included a USB stick that provided the landlord's evidence and Monetary Order worksheet. The landlord tried to confirm the tenants were able to view the content of the USB stick via text message and the tenant responded by saying the USB stick contained "zip" formatted files that were not acceptable. The landlord instructed the tenant to "extract" the zip files; however, the

landlord proceeded to send another disc to the tenants by registered mail on August 7, 2019 which the tenant picked up on August 11, 2019. The landlord acknowledged she did not confirm with the tenants whether they were able to view the contents of the disc that was sent on August 7, 2019.

The tenants testified that the landlord actually left a package at the door of their forwarding address in the evening of July 31, 2019 and the tenant read from text messages the landlord sent that evening. The person that retrieved the package was likely the female tenant's mother and the tenants received the package the following day on August 1, 2019. The tenants described the package as containing a USB stick and when they attempted to view the content they saw that all of the files were "zip" format, except one which was a ".png". The tenants stated their computer does not open "zip" files and that "zip" format is not acceptable under the Rules of Procedure.

Despite not being able to view the content on the USB stick the tenants uploaded evidence to the Residential Tenancy Branch website in an attempt to provide rebuttal evidence. The tenants explained that they understood the landlord was making a damage claim against them based on the proceeding documents they did receive in May 2019 and they uploaded evidence concerning numerous floods at the property because they knew they had a limited amount of time to do so. The tenants testified that they sent copies of approximately "90%" of their evidence to the landlord via registered mail. The tenants did not confirm with the landlord that she was able to view the content of their digital device. The landlord confirmed during the hearing that she received a digital device from the tenants and that she was able to see the content on it.

The tenants testified that they were unable to see a Monetary Order worksheet on the USB stick left for them on July 31, 2019. The tenants acknowledged receiving another package from the landlord in August 2019 but that it was another USB stick and that is the first time they saw the Monetary Order worksheet. It was also the first time they could see a copy of the move-out inspection report.

The tenants were of the position the landlord purposely delayed in providing her hearing documents and evidence. The landlord stated that she was unaware she had to provide a Monetary Order worksheet with the proceeding package and explained that she did not purposely delay but had to wait to obtain invoices and receipts for the repairs before serving the tenants again.

The tenants were of the position the landlord's claims should be dismissed and their security deposit refunded. The landlord objected to having to refund the security deposit to the tenants.

Both parties were in agreement that the tenants paid a security deposit of \$750.00; that the tenancy ended on April 30, 2019; and, the tenants provided a forwarding address to the landlord, in writing, on April 30, 2019.

The parties were in dispute as to whether a move-in inspection report was prepared. The landlord stated that she did prepare one and the tenants were given a copy of it but that she had "misplaced" her copy. The tenants stated a move-in inspection report was not prepared by the landlord.

The parties were in dispute as to whether a move-out inspection was conducted together and a report prepared together. The landlord stated that the tenants and other people appeared along with the tenants for the move-out inspection and the landlord was there to do the move-out inspection with her daughter. The landlord stated that she prepared a move-out inspection report but that the tenants did not want anything to do with it. The tenants stated that the landlord did not schedule a move-out inspection with them although came to the rental unit and screamed at them about a missing microwave that was never there and the landlord did not prepare a move-out inspection report with them.

Issue(s) to be Decided

1. Has the landlord properly served the tenants with the hearing documents and evidence or full particulars of the claim? If not, is it appropriate to deem the tenants sufficiently served?
2. Disposition of the security deposit.

Analysis

Section 59 of the Act provides that an Application for Dispute Resolution must contain the full particulars as to the matter under dispute. Rule 2.5 of the Rules of Procedure provides that a monetary claim must be accompanied by a detailed monetary calculation. The Residential Tenancy Branch provides a "Monetary Order worksheet" for applicants to use, if they so choose, to provide a detailed monetary calculation. Otherwise, the documents that accompany the Application for Dispute Resolution must sufficiently provide for a detailed monetary calculation. If an applicant files on-line, the

required documents must be provided to the Residential Tenancy Branch within 3 days of filing.

Rule 3.1 of the Rules of Procedure provides that an applicant must serve the respondents with their Application for Dispute Resolution, other required documents that form part of the proceeding package, and any other documents provided to the Residential Tenancy Branch.

In keeping with section 59 of the Act and Rules 2.5 and 3.1 of the Rules of Procedure, the landlord was required to provide a detailed monetary calculation to the tenants with the package sent to them on May 9, 2019. The landlord did not provide a Monetary Order worksheet at that time. Rather, the tenants were provided the following details:

01 - I want compensation for damage caused by the tenant, their pets or guests to the unit, site or property - holding pet or security deposit

Amount owed: \$4,239.98

Applicant's dispute description:

Locks changed keys not returned \$23.07 /carpet cleaning due to pet urine stains \$210/missing microwave from set of 4
\$331.91 Canadian funds/cost to paint due to smoke damage to walls and ceilings,doors

No evidence submitted at time of application

The details of the dispute, as written by the landlord and shown above, do not reflect a total claim of \$4,239.98 and the description is so cryptic that one could not be expected to understand how the landlord arrived at the sum she is claiming.

The landlord attempted to serve the tenants with documents and evidence again on July 30, 2019 or July 31, 2019 by leaving it outside of the door of their forwarding address. Doing so does not meet the service requirements of the Act. Nevertheless, the tenants acknowledged receiving that package on August 1, 2019 and I deem them sufficiently served on August 1, 2019. However, the tenants describe the content on the digital device as being in an unacceptable format. Rule 3.0.2 of the Rules of Procedure provides that the Residential Tenancy Branch may impose restrictions or limits on digital evidence, including format. Rule 3.10 of the Rules of Procedure provides that digital evidence may include documents and evidence but that it must be in an acceptable format.

The tenant had informed the landlord that the files on the USB stick left at the front door on July 30 or 31, 2019 were not in an acceptable format. A party relying upon a digital device must ensure the other party is able to view the content on the digital device. The landlord did not have that confirmation in this case and served another digital device to

the tenants; however, that digital device was sent in the mail on August 7, 2019 and received on August 11, 2019. In sending documents and evidence on August 7, 2019 is much too close to the hearing date considering a party should allow five days for mailing, as provided under section 90 of the Act, and I was not prepared to admit that evidence since it would be unfair and prejudicial to do so.

Although the landlord explained she had to wait until she had invoices and receipts before serving the tenants, it is apparent to me the landlord knew the amount of her losses when she filed on May 7, 2019 since the claim of May 7, 2019 is the same as the Monetary Order worksheet she prepared and submitted to the Residential Tenancy Branch in late July 2019. The landlord's explanation that she did not know she had to serve a detailed monetary calculation is not a basis to set aside the requirements of the Act and the Rules of Procedure that are available for applicants to familiarize themselves with or make enquiries with the Residential Tenancy Branch Information Officers.

In light of the above, I find the landlord failed to set out the full particulars of her claim in serving the tenants with her Application for Dispute Resolution, or within an acceptable time frame, and I decline to proceed to hear her claims. I dismiss the landlord's claims against the tenants with leave to reapply.

As for the security deposit, the time limit for making a claim against the security deposit has now expired. Under section 38 of the Act, a landlord may only make a claim against a security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever date is later. In this case, the last date for making a claim against the tenants' security deposit was May 15, 2019. While the landlord did make a claim within that time, those claims have been dismissed, with leave, as set out above; however, the landlord can no longer make a claim against the security deposit.

Residential Tenancy Branch Policy Guideline 17 provides that an Arbitrator will order return of the security deposit if the landlord's claims against the security deposit are dismissed. I have considered whether there is any basis for not ordering return of the security deposit, such as extinguishment by the tenants. A tenant extinguishes the right to return of the security deposit in limited circumstances provided under the Act. According to the landlord the tenants participated in a move-in and move-out inspection of the property and provided a forwarding address in writing. Refusing to sign an inspection report is not a basis for finding extinguishment. As such, I find there is no evidence to suggest the tenants extinguished their right to return of the security deposit.

In keeping with the above, I provide the tenants with a Monetary Order for the amount of the security deposit, or \$750.00, to serve and enforce upon the landlord.

Conclusion

The landlord's claims against the tenants are dismissed with leave to reapply.

The time to make a claim against the security deposit has passed and the tenants did not extinguish their right to its return. Accordingly, the tenants are provided a Monetary Order for the amount of the security deposit, or \$750.00.

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: August 14, 2019

Residential Tenancy Branch