



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and procedural matters

At the start of the hearing the tenant stated that they were unaware the landlord has filed an Application for Dispute Resolution.

The landlord testified that they served the tenant in person in July 2019, when they were still residing at the rental unit.

The tenant responded that they had vacated the rental unit on June 30, 2019, and it would have been impossible to have been served in person.

The landlord responded that they think it was sent by regular mail on October 1, 2019.

In this case, the landlord has provided false testimony that they served the tenant in person in July 2019, in person. That was impossible as the tenants were not living there at the time.

Further, the landlord alleged they sent the Application for Dispute Resolution on October 1, 2019, by regular mail, which was not received by the tenant.

I find the landlord has not complied with the service provisions of section 88 of the Act, and the Residential Rules of Procedures. Therefore, I dismiss the landlord's application with leave to reapply.

Not serving the Application for Dispute Resolution has the same effect, as if the application was not made.

Issue to be Decided

Are the tenants entitled to the return of the security deposit

Background and Evidence

The parties agreed that the tenancy began on in 2014. Current rent in the amount of \$1,000.00 was payable on the first of each month. The tenants paid a security deposit of \$420.00. The tenancy ended on June 30, 2019.

The tenant testified that they gave the landlord their forwarding address in a letter, which was mailed on July 5, 2019. The tenant stated that the landlord had no intentions of returning the security deposits as shown in the text messages. The tenant stated the landlord was mad that they were entitled to withhold rent for the month of June 2019, as they were served with a notice to end tenancy, pursuant to section 49 of the Act.

The landlord confirmed that they received the tenants forwarding address.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on July 5, 2019. However, the landlord did not serve the tenants in accordance with the Act, and I dismissed the landlord's application with leave to reapply. Not serving an application for dispute resolution has the same effect, as if, the application was never made.

Further, any future application filed by the landlord would be outside the statutory time limit.

I accept tenants' evidence that the landlord did not have any intention of returning the tenant's security. I find the landlord has breached 38(1) of the Act.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of \$940.00, comprised of double the security deposit (\$420.00) on the original amount held and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application for return of the security deposit.

The landlord's application for a monetary order for unpaid rent and damages 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: October 28, 2019

Residential Tenancy Branch