Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The tenants attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:10 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

As only the tenants attended the hearing, I asked the tenants to confirm that they had served the landlords with the Notice of Dispute Resolution Proceeding for this hearing. The tenants testified that they served the landlord with the notice of this hearing by Canada Post registered mail on August 22, 2019 and verbally provided the registered mail tracking number during the hearing, which I have noted on the cover sheet of this decision. The tenants testified that the landlord did not provide an address for service on the written tenancy agreement, however, the tenants testified that the landlord provided an address for service on a Mutual Agreement to End Tenancy form dated January 31, 2019. The tenants testified that they sent the Notice of Dispute Resolution Proceeding package to that address. During the hearing, I accessed the Canada Post

website and confirmed that the package was delivered and signed for by someone with the same first name and last initial as the landlord.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

> *Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

Therefore, I find that the landlord was served with the notice of this hearing on August 27, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

The tenants confirmed that they did not submit any documentary evidence for this hearing, therefore I only considered the tenants sworn testimony.

Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit? And if so, is the tenant entitled to statutory compensation equivalent to the value of the security deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenants testified that there was a written tenancy agreement between the parties, however, the tenants did not submit a copy into documentary evidence. The tenants provided the following unchallenged testimony pertaining to this tenancy:

- This tenancy began March 1, 2018 as a 12-month fixed term tenancy. At the end of the term, the tenancy converted to continue as a month-to-month tenancy.
- Monthly rent of $2,000.00 was payable on the first of the month.
- The tenants paid a $1,000.00 security deposit and a $1,000.00 pet damage deposit at the beginning of the tenancy.
- The tenants testified that the landlord never invited them to participate in a walk-through condition inspection of the rental unit at move-in, and although they participated in a condition inspection at move-out, the landlord never provided the tenants with a written condition inspection report at move-in or move-out.
- The tenants moved out and ended the tenancy on June 1, 2019.

The tenants testified that they texted the landlord their forwarding address on June 1, 2019. After consultation with the Residential Tenancy Branch and learning of the requirement for tenants to provide their forwarding address to the landlord in writing, the tenants testified that they sent the landlord a letter by Canada Post registered mail with their forwarding address. During the hearing, the tenants provided the registered mail tracking number, which I have noted on the cover sheet of this Decision. I accessed the Canada Post website confirmed that the package was delivered and signed for by someone with the same first and last initial as the landlord.

The tenants testified that the landlord never returned the security or pet damage deposits and that they never agreed in writing to allow the landlord to retain all or a portion of their deposits.

Analysis

The *Act* contains comprehensive provisions on dealing with security and/or pet damage deposits. Under section 38 of the *Act*, the landlord is required to handle the security and/or pet damage deposit as follows:

> 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.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

Further, I note that in this matter, based on the tenants' unchallenged testimony, the landlord extinguished his right to claim against the security deposit for damage to the rental unit by failing to provide a written condition inspection report to the tenants at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

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
(a) does not comply with section 23 (3) [*2 opportunities for inspection*]
(b) having complied with section 23 (3), does not participate on either occasion, or
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Therefore, the landlord had no right to make a claim against the security deposit or pet damage deposit for damage to the rental unit and was required to return the deposit to the tenants within 15 days of the end of the tenancy, and once he received the tenants' forwarding address in writing.

In this matter, the tenancy ended on June 1, 2019. The tenants testified that they sent the landlord their forwarding address in writing on July 11, 2019 by Canada Post registered mail. In accordance with sections 88 and 90 of the Act, I find that the landlord was deemed served with the tenants' forwarding address on July 16, 2019, the fifth day after mailing.

Therefore, the landlord had 15 days from July 11, 2019, to address the security deposit and pet damage deposit in accordance with the *Act*.

The tenants confirmed that they did not provide the landlord with any authorization, in writing, for the landlord to retain any portion of the security or pet damage deposits.

The landlord may only keep all or a portion of the security or pet damage deposit through the authority of the *Ac*t, such as an order from an Arbitrator, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* to keep any portion of the security or pet damage deposits.

Based on the above legislative provisions and the unchallenged testimony of the tenants, on a balance of probabilities, I find that the landlord failed to address the security and pet damage deposits in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a monetary award of $4,000.00, which is equivalent to double the value of the security and pet damage deposits paid by the tenants at the beginning of the tenancy, with any interest calculated on the original amount only. No interest is payable for this period.

As the tenants were successful in this application, I find that the tenants are entitled to recover the $100.00 filing fee paid for this application from the landlord.

In summary, I order that the landlord pay the tenants the sum of $4,100.00 in full satisfaction of compensation to the tenants for failing to comply with section 38 of the *Act*, and recovery of the filing fee paid by the tenants for this application.

Conclusion

I grant a Monetary Order in favour of the tenants in the amount of $4,100.00.

The tenants are provided with this 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.

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: December 19, 2019

Residential Tenancy Branch