



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's application for return of double the 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.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other. The tenants submitted that the proceeding documents were sent to the landlord via registered mail on September 20, 2019. A search of the registered mail tracking number (recorded on cover page of this decision) showed that a notice card was left by Canada Post on September 23, 2019 and available for pickup at the Post office that same date. Canada Post recorded that the landlord received the registered mail on September 27, 2019 although no signature for the landlord appears for the landlord on the Canada Post website. Then, somebody wrote "Return to Sender" across the front of the envelope and it was returned to the tenants without the envelope appearing to be opened. The envelope returned to the tenants was devoid of the label that is typically placed on an envelope Canada Post could not successfully deliver. The tenants provided an image of the registered mail receipt, including tracking number, and the envelope that was returned to them.

I confirmed the landlord's address with her, and upon review of the registered mail envelope I was satisfied the tenants had correctly addressed the registered mail to the landlord.

The landlord denied receiving a notice card from Canada Post or attending the post office to pick up the registered mail. The landlord also stated that she may have been away at around that same time the registered mail was sent to her although she did not

provide any documentary evidence of that. The landlord did say that there is another dwelling on the same property that is occupied by people although she did not suggest those people had attempted to pick up her registered mail.

The landlord stated that she was able to dial into the teleconference call hearing because she did receive an email from the Residential Tenancy Branch reminding her about a hearing. She contacted the Residential Tenancy Branch and received the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch. The Notice of Dispute Resolution Proceeding also contains the tenant's Application for Dispute Resolution putting the landlord on notice as to the details of the dispute; however, it was not accompanied by the tenant's evidence.

The landlord had uploaded several documents for this hearing but acknowledged that she did not serve them to the tenants.

Considering both parties had not received the other parties' evidence, I informed the parties I was prepared to proceed and allow the parties to orally describe their evidence. Both parties indicated they wished to proceed in that manner.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence on June 1, 2019. The tenants paid a security deposit of \$675.00. The tenants were required to pay rent of \$1,350.00 on the first day of every month.

The landlord did not schedule a move-in inspection with the tenants or prepare a move-in inspection report.

The tenants gave a written notice to end tenancy to the landlord, in person, on July 31, 2019 with an effective end of tenancy date of August 31, 2019. The tenants paid rent for August 2019 and returned possession of the rental unit to the landlord on August 19, 2019 although their movers came to pick up their possessions in the days that followed.

The tenants described their notice to end tenancy as being a form they downloaded from the internet, was type-written, signed by both of them, and among other things included their forwarding address. The landlord testified that she did receive a notice to end tenancy from the tenants but that she misplaced it and she cannot locate it. The landlord believes it was hand-written, but she could not recall what it said. The landlord stated that she asked for the tenant's forwarding address again and she received it on or about September 15, 2019.

On August 19, 2019 the landlord came to do a move-out inspection while the tenants and their possessions were still in the rental unit. The parties had a different recollection of what transpired on August 19, 2019 that I have summarized below.

According to the tenants they asked the landlord if the rental unit looked "ok" and the landlord responded "yes" and she did not ask them to come back at another time to do a move-out inspection. The tenants left town and their mover's vehicle broke down, so the movers retrieved their possessions on August 21, 2019. After leaving the tenants never heard from the landlord that she wanted them to return to inspect the unit.

The landlord testified that on August 19, 2019 she told the tenants she could not do the move-out inspection because the unit was full of boxes and that they would have to come back later or get someone else to do the move-out inspection and they said they would not do that so she did not ask them to return for a move-out inspection. The landlord was of the position the tenants' movers removed their possessions on August 25, 2019.

The landlord stated that she told the tenant she was going to make a deduction for cleaning from the security deposit and the tenant did not agree and demanded the landlord refund the security deposit in full or she would file a claim with the Residential Tenancy Branch. The landlord considered this to be a "threat".

The landlord was of the position she incurred expenses as a result of the tenancy and she has used most of the security deposit to have the unit cleaned, pay movers to move furniture, and replace a spin/washer. The landlord stated there is a balance of \$105.00 of the security deposit left after paying these amounts although she has not sent the tenants a partial refund. The landlord also implied the tenants breached a fixed term tenancy agreement even though their written agreement reflects a month to month tenancy. The landlord acknowledged that she had not filed her own Application for Dispute Resolution yet to make a claim against the tenants.

Analysis

Unless a tenant has lost the right to return of the security deposit, section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to make deductions from the security deposit, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

Based on the requirements of the Act described above, I proceed to determine whether the tenants are entitled to doubling of the security deposit as provided under section 38(6).

I have considered whether the tenants extinguished their right to return of the security deposit. Section 36 of the Act provides that a tenant extinguishes their right to return of the security deposit if a tenant does not participate in a move-out inspection despite being provided two opportunities to do so by the landlord. I find the opposed oral testimony as to what transpired on August 19, 2019 does not satisfy me that the tenants extinguished their right to return of the security deposit and the landlord confirmed that she did not propose a second/date time for a move-out inspection.

It is undisputed that the tenants did not authorize the landlord to make any deductions from the security deposit in writing.

I find the tenancy ended in late August 2019 and whether it ended August 19, 2019 when the tenants returned possession to the landlord, or August 21, 2019 or August 25, 2019 when the tenant's property was removed, or August 31, 2019 as being the effective date of the notice to end tenancy is inconsequential in making this decision.

As for providing a forwarding address to the landlord, I find I am satisfied the tenants did provide their forwarding address to the landlord. The tenants testified that their forwarding address was in their notice to end tenancy that was given to the landlord in person on July 31, 2019. I find I prefer the tenant's very specific and accurate description of their notice to end tenancy over that of the landlord's vague description of a notice to end tenancy that she claims she cannot locate. As such, I find it more likely than not that the forwarding address was included in the notice to end tenancy as

submitted by the tenants. Even if the landlord did misplace the tenant's notice to end tenancy, she testified that she asked for them to provide it to her again and they did provide it to her again in mid-September 2019. Whether the landlord received the forwarding address on July 31, 2019 or in mid-September 2019 is inconsequential in making this decision since the landlord still has not refunded the security deposit or made a claim against it and well over 15 days has elapsed since either of those dates.

In light of the above, I find I am satisfied the tenants did not extinguish their right to return of the security deposit, the tenants did not authorize the landlord to make deductions from their security deposit, more than 15 days elapsed since the tenancy ended and the landlord received the tenant's forwarding address and the has not refunded the security deposit or made an Application for Dispute Resolution to make a claim against it. Accordingly, I find the landlord violated the requirements of section 38(1) and must now pay the tenants double the security deposit pursuant to section 38(6) of the Act.

In light of the above, I grant the tenant's request for return of double the security deposit. I further award the tenants recovery of the \$100.00 filing fee they paid for this Application for Dispute Resolution. Therefore, the tenants are provided a Monetary Order in the sum of \$1,450.00 to serve and enforce upon the landlord.

The landlord submitted that she has incurred costs associated to this tenancy; however, that does not automatically entitle the landlord to make deductions or retain the security deposit and the time limit for making a claim against the tenant's security deposit has long since expired. As I informed the parties during the hearing, the landlord has lost the right to make a claim against the tenant's security deposit, but she retains the right to make a claim against the tenants for damages or losses she may have suffered as a result of the tenants' breach of the Act, regulations or tenancy agreement, if any. Since the landlord has yet not made a claim against the tenants, the landlord's losses, if any, were not matters for me to determine.

Conclusion

The tenants are provided a Monetary Order in the sum of \$1,450.00 for return of double the security deposit and recovery of the filing fee to serve and enforce upon the landlord.

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: January 29, 2020

Residential Tenancy Branch