Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on September 26, 2019 seeking a monetary order. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 23, 2020. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

In the hearing, the tenants gave evidence of the attempt they made to serve the landlord with the Notice of Dispute Resolution Proceeding (the "Notice"). The tenants provided a copy of the original Canada Post registered mail receipt containing the date of service, the address of service, and a printed tracking report. I am satisfied this is the landlord's place of business, being the same address of record as that which appears on the original tenancy agreement. The landlord did not attend the conference call hearing, and the tenants' evidence shows the registered mail was unclaimed by the addressee. Other evidence and testimony provided by the tenants shows an ending of messaging from the landlord at the time the tenants moved out from the unit, as well as the landlord's voicing of discontent at the circumstances. I am of the mind that the landlord was deliberately avoiding service of the Notice. As a result, I find the landlord was sufficiently served with the Notice pursuant to section 71 of the *Act*. For this reason, the matter will proceed.

Issue(s) to be Decided

- Is the tenant entitled to an Order granting a refund of double the amount of the security deposit and pet damage deposit pursuant to section 38(1)(c) of the *Act*?

- Is the tenant entitled to an Order granting a refund of the key deposit?

- Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord and the tenants jointly signed the tenancy agreement on November 16, 2018, with an effective start of the tenancy on November 17, 2018. The agreement was for a fixed tenancy scheduled to end on November 30, 2019. The monthly rent was $2,000.00 and the tenant paid three deposits: a security deposit of $1000.00; a pet damage deposit of $1000.00; and a key deposit of $50.00.

The tenants gave oral testimony that they wanted to end the agreement before the agreed-to date, in July 2019. There was reciprocal communication about finding new tenants in these particular circumstances, and the tenants stated that they provided “30 to 40 applicants” to the landlord. The tenancy ended on August 31, 2019.

The tenants’ claim is for a return of the $2050.00 they originally paid at the time of their entry into the tenancy agreement on November 16, 2018. The tenants stated that there was no prior agreement for the landlord to retain any portion of the deposits. Additionally, they did not receive any notice of a dispute resolution from the landlord to claim against these deposits.

The tenants gave their testimony that communication around the end of the tenancy had ceased, and the landlord refused to maintain contact regarding the close-out inspection and return of the security and damage deposits. They stated that they provided a forwarding address for their new place of residence, via email, on September 1, 2019, then following up with another email on September 16, 2019. There is evidence in the record of the specific email address they used specifically for these two messages.

The tenants provided a captured screenshot of a telephone text message, purportedly to the landlord, showing another communication of their forwarding address to the landlord. This is dated September 19, 2019, approximately 2 months after a previous message to this number on July 12, 2019, a time earlier within the tenancy.

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

In order for the tenants to meet the requirement that they provided their forwarding address in writing, there must be proof that there was a written document with that information conveyed. They must have served that document pursuant to section 88 – that is in person, by mail, left at the place or address of business, or attached to the landlord's door. This does not arbitrarily preclude text messages via phone or emails; I can consider these an alternate method of service if there is some proof of corroboration that the landlord received the information.

I am not satisfied the tenants provided their forwarding address in the method prescribed by the *Act*. I make this finding for the following reasons:

- The evidence shows a pattern of communication prior to the end of tenancy (July through August 2019) at one landlord email address, and a second landlord email address used by the tenants after the tenancy had ended (September 2019). The key communication that the tenants rely on as proof they sent this information to the landlord, in September, does not show evidence of responses from the landlord to these messages. As such, I cannot conclude that this is a valid channel of communication between the landlord and tenants.

- The captured screenshot of a text message dated September 19, 2019 does not make reference to the landlord's phone number for contact. The screenshot shows an earlier message on July 12, 2019; however, there is nothing to cross-reference this important information conveyed via text message with this earlier communication. That is to say, it is not clear if the message is conveyed to the landlord at a valid contact number; also, not clear if the landlord maintained this particular phone number for the purposes of communication with the tenants. There is no name attached to the phone number, and the phone number itself is not provided for reference.

The text and email methods outlined above – without specificity on the recipient involved – are not prescribed methods as per section 88 of the *Act*. The email addresses are inconsistent, and the text message evidence does not show the recipient's contact information. As such I am not satisfied that the landlord received the forwarding address *in writing* as specified in section 38(1). By finding the landlord was not provided with the forwarding address, there is

no obligation for the landlord to either repay the deposits or claim against them. As such, I find the tenants' application for the return of the deposits is premature.

Conclusion

I dismiss the tenants' application to retrieve the key, security and pet deposits for the reasons outlined above. I grant the tenants leave to reapply until such time as they have provided their forwarding address using the acceptable methods of service or can provide sufficient evidence to establish the landlord has received the address.

The tenants were not successful in this application; therefore, I find they are not entitled to recover the $100 filing fee paid for this application.

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: February 5, 2020

Residential Tenancy Branch