



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Associate Property Management (2001) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFL

Preliminary Matters

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be “signed and dated by both the landlord and the tenant.”

I find that Tenant J.T. has not signed the tenancy agreement, which is a requirement of the Direct Request Process.

For this reason, I will only proceed with the portion of the tenants’ application naming Tenant P.T. as an applicant.

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for the return of the security deposit (the deposit).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 12, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on March 17, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is Tenant P.T. entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is Tenant P.T. entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

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

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and Tenant P.T. on December 14, 2018, indicating a monthly rent of \$1,200.00 and a security deposit of \$600.00 for a tenancy commencing on December 15, 2018;
- A copy of a notice to vacate which was signed by the tenants on December 31, 2019, providing the tenants' forwarding address and indicating the tenancy would end as of January 31, 2020;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail at 5:24 pm on December 31, 2020;
- A copy of two e-mails exchanged between the landlord and the tenants on December 31, 2019, in which the landlord requests the notice to end tenancy to be submitted by e-mail and the tenants provide the landlord with their notice to end tenancy and forwarding address by e-mail;
- A copy of an Interac e-Transfer from the landlord to the tenants dated February 19, 2020 in the amount of \$151.46; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet). showing the amount of deposit paid by the tenants and the partial reimbursement made by the landlord.

Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

I have reviewed all documentary evidence and I find that Tenant P.T. paid a security deposit in the amount of \$600.00 as per the tenancy agreement.

Section 71(2)(c) of the *Act* enables me to make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I find that the tenants sent their notice to end tenancy and forwarding address to the landlord by e-mail, which is not a method of service permitted under section 88 of the *Act*. However, I note that the landlord requested the notice to end tenancy be delivered in this way. I also find that the landlord and tenants have a history of using e-mail as a method of communication and that in most of the e-mails submitted by the tenants, the landlord replies to e-mails the same day they were received.

For this reason, and in accordance with section 71(2)(c) of the *Act*, I find that the landlord has been served with the notice to end tenancy and forwarding address on the day they were e-mailed, December 31, 2019.

I find that the tenancy ended on January 31, 2020, the date indicated on the tenants' notice to vacate.

I accept the following declarations made by the tenants on the Monetary Order Worksheet:

- The tenants have not provided consent for the landlord to keep all or part of the deposits;
- There are no outstanding Monetary Orders against the tenants for this tenancy; and
- The tenants have not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the evidence before me that the landlord has failed to return the full deposit to Tenant P.T. and has not filed an Application for Dispute Resolution requesting to retain the deposit, within the fifteen days granted under section 38(1) of the *Act*.

Therefore, I find that Tenant P.T. is entitled to a monetary award in the amount of \$448.54, for the \$600.00 deposit less the \$151.46 returned by the landlord, as of the date of this application, February 29, 2020.

As Tenant P.T. was successful in this application, I find that Tenant P.T. is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant Tenant P.T. a Monetary Order in the amount of \$548.54 for the return of the security deposit and for the recovery of the filing fee for this application. Tenant P.T. is 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: March 18, 2020

Residential Tenancy Branch