



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mooney Supply Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, MNDCT

Introduction

This hearing was convened in response to an application made March 2, 2020 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38; and
2. A Monetary Order for compensation - Section 67.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that its email address as set out in the Tenant’s application is correct.

Preliminary Matters

The Tenant confirms that its claim for compensation is in relation to the Tenant’s losses during the tenancy and that this claim has also been made in a separate application scheduled to be heard at a future hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As losses experienced during a tenancy are not related to return of the security deposit and given that this claim will be heard in a future hearing, I dismiss the claim for compensation with leave.

The Landlord states that the agreement for the accommodation was a licence to occupy. The Landlord confirms that they are not arguing that the Act does not apply to the dispute. Given this confirmation the agreement for the accommodation is referred to hereinafter as the “tenancy”.

The Tenant states that it sent the Landlord 6 evidence packages and that 4 of these packages were returned to the Tenant. The Landlord confirms receipt of the Tenant’s evidence as follows: a monetary order worksheet, the notice of hearing, a request for the return of the security deposit and the Tenant’s forwarding address. Given the Tenant’s evidence that the Landlord did not receive all of the Tenant’s evidence packages I will only consider that evidence stated to be received the Landlord.

Issue(s) to be Decided

Is the Tenant entitled to return of its security deposit?

Background and Evidence

The tenancy under written agreement started on November 1, 2019 to end April 30, 2020. At the outset of the tenancy the Landlord collected \$325.00 as a security deposit. On December 9, 2019 a flood occurred in the unit and the tenancy was transferred to another unit and then another unit. The Tenant moved out of the last unit on December 30, 2019. No move-in inspection was offered or conducted.

The Tenatn states that it provided its forwarding address in a letter dated January 28, 2020 by registered mail on February 20, 2020. The Tenant provides a copy of that letter as evidence with its application but no postal evidence to support this mailing date. At the hearing the Tenatn provided a tracking number for the mail send February 20, 2020. It is noted that this tracking number indicates that the mail was sent March 20, 2020. The Tenant also provided with its application a copy of an express post tracking number for an item mailed January 20, 2020 and delivered February 6, 2020 as

proof of service of its forwarding address however the Tenant submits on its application that this mail did not include its forwarding address.

The Tenant states that this mail was sent to the Landlord's address given to the Tenant by the general manager at the outset of the tenancy. The Tenant states that this address was provided as the Landlord's office address. The Tenant states that it also sent its forwarding address to the Landlord on March 21, 2020 and March 24, 2020 by registered mail. The Landlord states that the Tenant sent some letters to a wrong address.

The Landlord states that it received the Tenant's registered mail with its forwarding address on April 5, 2020 by registered mail. The Landlord states that this mail was postmarked April 8, 2020. The Landlord also states that it received two envelopes by registered mail: one received March 17, 2020 with no forwarding address included and one on April 8, 2020 with a forwarding address in a letter dated March 19, 2020. The Tenant states that where mail was sent to a wrong address it was returned to the Tenant. The Tenant states that the mail sent on February 20, 2020 was not returned. The Landlord argues that since they only received the Tenant's address on April 8, 2020 the Landlord still has time to return the security deposit. The Landlord states that they did receive registered mail on February 20, 2020 that contained a handwritten letter marked as "without prejudice" requesting the return of the security deposit but that no forwarding address was in that letter. The Landlord states that it received a letter from the Tenant dated January 17, 2020 and another posted March 17, 2020. The Landlord states that the March 17, 2020 envelope had the Tenant's address on the envelope and that it does not know whether the January 17, 2020 letter had an address as they do not have the envelope to determine this fact.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the

landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit.

Both the Tenant and the Landlord gave confusing evidence in relation to the sending and receipt of the Tenant's mail. However, the Tenant has the burden to prove that the Landlord received the Tenant's forwarding address. As the Tenant made its application on March 2, 2020 the Tenant should have sent its forwarding address at least 15 days in advance of this date as the application would otherwise be pre-emptive. While the Tenant provides a tracking number for the mail sent January 20, 2020 indicating receipt by the Landlord on February 6, 2020 the Tenant has submitted that this letter did not include a forwarding address. The Tenant's oral evidence of the tracking number for registered mail sent February 20, 2020 indicates that this mail was sent March 20, 2020. As a result, and considering the Landlord's evidence that they did not receive the Tenant's forwarding address until April 5 or 8, 2020, I find on a balance of probabilities that the Tenant has not substantiated that it provided its forwarding address before it made its application on March 2, 2020 for the return of the security deposit. I find therefore that the Tenant made its application too early.

For these reasons and as the Tenant's evidence of its forwarding address is the same address used in the Tenant's application, I can only find now that the Landlord is deemed to have received the Tenant's forwarding address as a result of this Decision. I find that the Landlord therefore has 15 days from receipt of this Decision to deal with the security deposit. I dismiss the Tenant's application with leave to reapply should the Landlord fail to deal with the security deposit in accordance with the Act.

Conclusion

The application 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 Act.

Dated: April 22, 2020

Residential Tenancy Branch