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:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords and tenant A.J. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlords were served with the tenants' application for dispute resolution at the end of November 2019 via registered mail. I find that the tenants' application for dispute resolution was served on the landlords in accordance with section 89 of the *Act.*

Preliminary Issue- Joining Landlord's Application

The landlord requested that the tenants' application for dispute resolution be joined with the landlord's application for dispute resolution which was filed on March 24, 2020. I declined to join the applications because the tenants were not given adequate notice that the applications would be joined. I find it would prejudice the tenants to hear the landlords' application as the tenants would be denied time permitted under the *Act* and the Residential Tenancy Rules of Procedure to respond to the landlords' claims.

Preliminary Issue Tenant's Late Evidence

Tenant A.J. uploaded evidence to the Residential Tenancy Branch Dispute Resolution system on April 14, 2020 and April 16, 2020. Tenant A.J. testified that she emailed the landlords the evidence on the same days they were uploaded. The landlords testified that they did not have an opportunity to review and respond to the April 14, 2020 and April 16, 2020 evidence.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence should be served on the respondents at least 14 days before the hearing. Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the landlords testified that they did not have time to review and respond the to tenants' late evidence. I find that the admittance of the tenants' late evidence would prejudice the landlords. I therefore refuse to consider the tenants' April 14, 2020 and April 16, 2020 evidence when rendering this decision.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 31, 2018 and ended on November 1, 2019. Monthly rent in the amount of $1,125.00 is payable on the first day of each month. A security deposit of $575.00 and a pet damage deposit of $281.25 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants provided the landlords with their forwarding address via text and email on November 1, 2019. The landlords testified that they received the tenants' forwarding address on November 1, 2019.

Both parties agree that the landlords returned $293.75 from the deposits to the tenants on November 20, 2020.

Both parties agree that they completed a joint move in condition inspection report on or around January 1, 2019. Tenant A.J. testified that the landlord did not provide the tenants with a copy of the move in condition inspection report until she recently received a copy in the landlords' evidence package for the landlords' Residential Tenancy Branch arbitration. The move in condition inspection report was not entered into evidence.

Both parties agree that tenant C.R. and the landlords completed a joint move out condition inspection report on or around November 2, 2019. Tenant A.J. testified that the landlord did not provide the tenants with a copy of the move in condition inspection report until she recently received a copy in the landlords' evidence package for the landlords' Residential Tenancy Branch arbitration. The move out condition inspection report was not entered into evidence.

Tenant A.J. testified that the tenants did not provide the landlord with written authorization to retain any portion of their deposits. The landlords testified that during the move out condition inspection tenant C.R. told them that he was "not paying for anything". The landlords testified that tenant C.R. signed the move out condition inspection report and authorized the landlords to retain $575.00 from the tenants' security deposit. The move out condition inspection report was not entered into evidence.

Tenant A.J. testified that the landlords filled in the section of the move out condition inspection report authorizing the landlords to retain the tenants' security deposit after tenant C.R. signed it and that tenant C.R. did not authorize the landlords to retain any portion of the tenants' deposits.

Analysis

While text messaging and email are not recognized methods of service under section 88 of the *Act*, I find that the landlords were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act,* with the tenants' forwarding address on November 1, 2019 when the landlords testified they received it.

The landlords testified that the tenants authorized them in writing to retain $575.00 of the tenants' deposits. No physical evidence was provided by the landlords to support this testimony. The tenant testified that the landlords were not provided with written authorization to retain any portion of their deposits. The landlords had ample time to enter the condition inspection reports into evidence to support their testimony. I find the landlords testimony that tenant C.R. said he would not pay for any damages to be inconsistent with their later testimony that he agreed to allow the landlords to retain $575.00 from the tenants' deposits. I find that given the disputed testimony between the landlords and tenant A.J., the landlords have not proved, on a balance of probabilities, that they were authorized to retain any portion of the tenants' deposits.

Section 38 of the Act requires the landlords to either return the tenants' security deposit and pet damage deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security and pet damage deposits.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

In this case, while the landlord made an application to retain the tenants' security and pet damage deposits, the landlords' application was made more than 15 days after the

end of the tenancy and the tenants' provision of their forwarding address in writing. I find that the $293.75 the landlords returned to the tenants, was returned more than 15 days after the end of the tenancy and the provision of the tenants' forwarding address in writing. Therefore, pursuant to section 38(6)b) of the *Act,* the tenants are entitled to receive double their security deposit and pet deposit as per the below calculation:

$575.00 (security deposit) * 2 (doubling provision) = **$1,150.00**
$281.25 (pet damage deposit) * 2 (doubling provision) = $562.50 – $293.75 (amount landlord returned) = **$268.75**
Total = $1,418.75

As the tenants were successful in their application for dispute resolution, I find that they are entitled to recover the $100.00 filing free from the landlords, pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenants in the amount of $1,518.75.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: April 16, 2020

Residential Tenancy Branch