Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1199281 BC LTD. d.b.a. R.E. Real Estate Property Management and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: MNRL-S, FFL
For the Tenant: MNSDP-DR, FFT

The Landlord filed a claim for:

- $1,600.00 compensation for a monetary order for unpaid rent for the Landlord, retaining the security deposit to apply to this claim; and
- recovery of the $100.00 Application filing fee.

The Tenant filed a claim for:

- $3,200.00 compensation for the return of double the $1,600.00 security deposit; and
- recovery of her $100.00 Application filing fee.

The Tenant, and an agent for the Landlord, S.P. (the "Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

I considered service of the Notices of Dispute Resolution Hearing. Section 59 of the Act

states that each respondent must be served with a copy of the Application for Dispute Resolution and the Notice of Hearing. The Tenant said she served the Landlord with her Notice of Hearing documents by Canada Post registered mail, sent on March 20, 2020. The Tenant provided Canada Post tracking numbers as evidence of service, and the Agent confirmed having received these documents. The Tenant said she also sent these documents to the Landlord via email on April 19, 2020. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Tenant's Application and evidentiary documents, and I continued to hear from the Tenant.

The Agent said he served the Tenant with the Landlord's Notice of Hearing documents by mailing it to her in early February 2020. However, the Tenant said that she did not receive this package from the Agent. She said she found out about the Landlord's Application when she applied for dispute resolution, herself. The Agent said he sent the Notice of Hearing documents to the Tenant via regular mail.

Section 89 of the Act sets out the special rules for certain documents. Section 89 states:

> **89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
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> (a) by leaving a copy with the person;
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> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
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> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
>
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.
>
> [emphasis added]

"Mailing" an application is not an accepted means of serving these documents on a respondent, according to section 89. Pursuant to RTB Policy Guideline #12, I **dismiss the Landlord's application for dispute resolution with leave to reapply**.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent advised me that his property management company represented the owner, A.F., and that his company took over for the previous property managers in November 2019. As a result, I have amended the Landlord's name in the Application to reflect this change of property managers, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on August 1, 2019 and ran until November 30, 2019, and then operated on a month-to-month basis. They agreed that the Tenant paid the Landlord a monthly rent of $3,200.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $1,600.00, and a pet damage deposit of $1,600.00.

The Tenant submitted a document dated October 24, 2019, which she said she mailed to the Landlord that day, and which includes the Tenant's notice to the landlord to end the tenancy and her forwarding address ("Notice").

In the Notice, the Tenant said that pursuant to section 38 of the Act, her security and pet damage deposits ("Deposits") must be returned within 15 days after the later of the receipt of the forwarding address and the date on which the tenancy ends. The Tenant said in the Notice that she would vacate the rental unit on December 15, 2019. Again, the Tenant provided her forwarding address to the Landlord for the return of the Deposits, and she also said that the Landlord could return the Deposits to her via etransfer; she provided her email address in the Notice for this purpose.

The Agent said that the Tenant owes the Landlord $1,600.00 in rent for December 16 to

the 31st, as the Tenant only paid rent until December 15, 2019. The Agent said that the Landlord, therefore, retained the security deposit, because she believed the Tenant owed her this much money. The Parties agreed that the Landlord returned the Tenant's other deposit to the Tenant, the return of which the Tenant seeks in her Application.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that pursuant to section 90 of the Act, the Tenant provided her forwarding address to the Landlord on October 29, 2019, or five days after it was mailed. Further, I find that the tenancy ended on December 15, 2019. Section 38(1) of the Act states the following about the relevance of these dates to the Deposits:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $1,600.00 security deposit and the $1,600.00 pet damage deposit within fifteen days after December 15, 2019, namely by December 30, 2019. In the alternative, the Landlord could have applied for dispute resolution to claim against the deposits within these 15 days, pursuant to section 38(1). The Parties agreed that the Landlord returned only one of the Tenant's Deposits, and did not apply to the RTB to claim against the other Deposit by December 30, 2019. Therefore, I find the Landlord failed to comply with her obligations under section 38(1) in terms of the unreturned Deposit.

Since the Landlord failed to comply with the requirements of section 38(1), and pursuant

to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the unpaid Deposit. There is no interest payable on the Deposit.

> **38** (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Accordingly, the Landlord is not allowed under the Act to hold the unpaid Deposit pursuant to an application made after December 30, 2019.

Based on the evidence before more me, overall, I award the Tenant with double the $1,600.00 security deposit or $3,200.00 from the Landlord pursuant to sections 38 and 67 of the Act. I also award the Tenant with recovery of her $100.00 Application filing fee pursuant to section 72 of the Act for a total monetary order of **$3,300.00**.

Conclusion

The Tenant is successful in her Application for return of double the amount of the pet damage deposit, as the Landlord failed to comply with section 38(1) of the Act in not returning both Deposits within the time frame set out in section 38(1).

The Landlord's Application is dismissed with leave to reapply, as the Landlord did not serve the Tenant with the Application documents pursuant to section 89 of the Act.

I grant the Tenant a monetary order under section 67 from the Landlord in the amount of **$3,300.00**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: June 23, 2020

Residential Tenancy Branch