



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for \$2,990 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act;
- a monetary order for \$2,990 representing the return of the September 2019 rent pursuant to section 67;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both tenants attended the hearing. Landlord VA attended the hearing on behalf of the landlords. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and landlord VA confirmed, that the tenants served the landlords with the notice of dispute resolution form and supporting evidence package. Landlord VA testified, and the tenants confirmed, that the landlords served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order of \$5,980; and
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting May 1, 2018 and ending April 30, 2019. Following April 30, 2019, the tenancy converted into a month to month tenancy. Monthly rent was \$2,990 and is payable on the first of each month. The tenants paid the landlords a security deposit of \$1,495, which the landlord continues to hold in trust for the tenant.

1. Return of September 2019 rent

On August 23, 2019, the tenants notified the landlords via text message of their intent to end the tenancy as of August 31, 2019.

Landlord VA advised the tenants, via a text message on August 24, 2019, that they would still be responsible for paying September 2019 rent.

The tenants testified that they met with landlord VA on August 28, 2019 and served him with a letter containing their notice of their ending of the tenant and their forwarding (this letter was dated August 24, 2019). Landlord VA denied receiving such a letter.

The tenants vacated the rental unit on August 31, 2019.

On September 12, 2019, the tenants e-transferred the landlords \$2,990, representing payment of September 2019 rent.

Landlord VA testified that he posted the rental unit for rent online after the September long weekend (which I understand to mean after September 2, 2019), and that he secured a new tenant for the rental unit on September 16, 2019, with a start date for tenancy of October 1, 2019.

The tenants argue that the landlords did not minimize their losses (as he is required to do pursuant to section 7 of the Act), as they did not attempt to re-rent the rental unit for September 1, 2019. As such, they claim for the return of the September 2019 Rent.

Landlord VA argued that he is not required to take any steps to re-rent the rental unit until the tenants actually vacated the rental unit, and that he acted reasonably to minimize the landlords' losses.

2. Security Deposit

The tenants testified that they provided the landlords with their forwarding address in writing on August 28, 2019 (see above). Landlord VA denied receiving this letter.

On November 15, 2019, the landlord VA sent the tenants an e-transfer for \$1,325. The tenants required a password to access and deposit the funds and landlord VA did not send any contemporaneous communication with the e-transfer containing the password.

As such, the tenants were unable to accept the e-transfer. The e-transfer has since expired, and the funds remain in landlord VA's account.

Landlord VA testified that he used the same password as a previous e-transfer he sent the tenants in July 2019. He testified that he expected the tenants to use that password. He testified that he was unaware that the tenants were unable to accept the e-transfer, as they never sent him a text message or email and left him a voicemail. Landlord VA testified that he only attempted to return \$1,325 of the security deposit, because the tenancy agreement permitted a deduction of \$20 per day for late payment of rent, and that the tenants paid their September 2019 rent late.

Landlord VA testified that the landlords have not made any application to the Residential Tenancy Branch to keep all or a portion of the security deposit.

The tenants recognized that they did not have any proof that they served the landlords with their forwarding address on August 28, 2019 (such as a signed acknowledgement of receipt or a video of the meeting). As such, on November 24, 2019, the tenants sent each landlord a letter with their forwarding address via registered mail (Canada Post Tracking Numbers are reproduced on the cover of this decision).

Landlord VA confirmed that the address these letters were sent to is the landlords' address for service. However, he denied that the landlords ever received them. The Canada Post tracking information submitted into evidence by the tenants shows that two notice cards for each letter were left at the address for service, indicating where and when they could be picked up, but that the letters were unclaimed and returned to the tenants.

The tenants argue that, as the landlords have not returned any portion of their security deposit, they are entitled to the return of double the security deposit.

Landlord VA argued that the landlords never received the tenants' forwarding address and, as such, are not required to have returned the security deposit to the tenants. Additionally, he argued that the tenants should have been able to access the e-transfer sent November 15, 2019, and that they should have contacted him if there were issues.

Analysis

1. September Rent

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The tenants did not deny that they breached the Act. Rather, they argue that, even though they did, the landlords must still minimize their loss. They argue that by not posting the rental unit for rent starting September 1, 2019, the landlords failed to reasonably minimize their loss, and as such, are not entitled to September 2019 rent.

This position is incorrect.

Section 53 of the Act states:

Incorrect effective dates automatically changed

53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

So, as the tenants gave their notice to end the tenancy on August 23, 2019 with an effective date of August 31, 2019, and as section 45 requires tenants to give at least one month notice to end a tenancy, section 53 of the Act automatically corrects the effective date of the tenant's notice to end tenancy to September 30, 2019.

As such, upon receipt of the tenants' notice, the landlords were not obligated to start marketing the rental unit for rent as of September 1, 2019. The rental unit could not have been rented out at this time, as the tenancy was to continue to September 30, 2019.

By moving out of the rental unit on August 31, 2019, the tenants ended the tenancy. The tenancy was not ended pursuant to their notice, however. Rather, it was ended pursuant to section 44(1)(d) of the Act, which states:

How a tenancy ends

44(1) A tenancy ends only if one or more of the following applies:
(d) the tenant vacates or abandons the rental unit;

This section does not mean that the tenants did not breach the Act by moving out of the rental unit without giving proper notice (they are in breach of section 45), rather it simply provides the basis by which the tenancy ended.

The tenants breached section 45 of the Act by moving out of the rental unit without providing the landlords with one month's notice. This breach occurred on August 31, 2019. As such, I find that the landlords could not have reasonably rented the rental unit out for September 1, 2019. Accordingly, I find that the landlords acted reasonably in renting the rental unit out for October 1, 2019.

In the event that I am incorrect, and that the tenancy ended on August 23, 2019, I find that the landlords acted reasonably in not posting the rental unit for rent until early September 2019. Section 7(2) of the Act does not require that the landlords make every possible effort to minimize their loss, only that they act reasonable to minimize their loss. I find that it was a reasonable decision to wait until September to post the rental unit for rent, as it is very unlikely that, had they posted it for rent in late August 2019, they would have been able to rent it out for September 1, 2019. It is not unreasonable for the landlords to have decided to save the advertising costs, given the unlikelihood of success.

Accordingly, I dismiss this portion of the tenants' application.

2. Security Deposit

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

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.

Based on the testimony of the tenants, I find that the tenancy ended on August 31, 2019. I accept the tenants' testimony that they mailed their forwarding address to the landlords at their forwarding address via registered mail on November 25, 2019.

Section 88 of the Act states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(c) by sending a copy by ordinary mail or 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;

Section 88 does not require that the recipient actually pick up the document; it requires only that the document is sent. As such, I find that the landlords are deemed served with the tenants' forwarding address on November 30, 2019, five days after it was mailed, pursuant to section 90 of the Act.

I find that the landlords have not returned the security deposit to the tenants within 15 days of receiving their forwarding address, or at all.

I do not find that the attempted e-transfer of the security deposit meets this requirement as:

- 1) it was unsuccessful; and
- 2) in any event, it was not for the full amount of the security deposit.

I find that the landlords have not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants.

It is not enough for the landlords to allege an entitlement to a portion of the security deposit or deduct a portion of the deposit based on what they believe they are entitled to keep from the deposit and return the rest. The landlords must apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address.

There are only two permissible courses of action for the landlords to take within 15 days of receiving of the tenants' forwarding address: return the entire security deposit or make a claim against the security deposit.

The landlords did neither. Accordingly, I find that they have failed to comply with their obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim against the security deposit within the specified timeframe:

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

The language of section 38(6)(b) is mandatory. As the landlords have failed to comply with section 38(1), I order that they pay the tenants double the amount of the security deposit (\$2,990).

3. Security Deposit Filing Fee

As the tenants have been partially successful in their application, they are entitled to recover their security deposit filing fee from the landlords.

Conclusion

Pursuant to sections 38, 62, and 72 of the Act, I order that the landlords pay the tenants \$3,090, representing payment of the filing fee and double the security deposit.

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 16, 2020

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(C)
OF THE RESIDENTIAL TENANCY ACT ON JULY 6, 2020
AT THE PLACE INDICATED ON PAGE 7.