



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution by direct request, made on June 29, 2020 (the "Application") and adjourned to a participatory hearing. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the Landlord acknowledged receipt of the application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that they came together and signed a tenancy agreement for a tenancy that was meant to start on June 1, 2020. The Tenants had agreed to pay rent in the amount of \$2,700.00 each month. The Tenants paid a security deposit in the amount of \$1,350.00 which the Landlord continues to hold.

The Tenant stated that due to some cleaning and repair issues with the rental property, the Tenants did not move into the rental unit as intended on June 1, 2020. The Tenant stated that he requested the return of the security deposit, however, the Landlord has not yet returned the deposit. The Tenant stated that he provided the Landlord his forwarding address by email, however, could not recall on which date. The Tenants are seeking the full return of their security deposit as well as the filing fee.

The Landlord responded by stating the condition of the rental unit was reasonable and that the Tenants decided not to move into the rental unit, four days before they were meant to take possession of the rental unit. As such, the Landlord was unable to re-rent the rental unit until July 1, 2020. The Landlord could not recall if he received the Tenants' forwarding address. The Landlord feels entitled to retaining the Tenants' security deposit for the loss of rent.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

Section 88 of the *Act* allows for documents, other than those referred to in section 89, 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:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (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;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

In this case, the parties agreed that the Tenants did not move into the rental unit and ended the tenancy prior to its commencement. The Tenant stated that he provided the Landlord with his forwarding address by email, but could not recall when. The Landlord could not confirm that he received the Tenants' forwarding address. I find there is no evidence to confirm that the Landlord received the Tenants' forwarding address. I further find that the email message does not meet the requirements of Section 88 of the Act.

In light of the above, I find that the Tenants did not adequately serve the Landlord with their forwarding address in writing in accordance with Section 38(1) of the *Act*. Therefore, I dismiss the Tenants' Application with leave to reapply. The Tenants are required to provide the Landlord with their forwarding address in writing. It is suggested that this be done by Canada Post registered mail.

Section 39 of the *Act* establishes that it is the Tenants obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does not occur, the Landlord may keep the Deposit and the Tenants' right to the Deposit is extinguished.

As the Tenants were not successful with their Application, I also dismiss the Tenants' Application for the return of the filing fee.

During the hearing, the Landlord stated that he felt entitled to retaining the Tenants' security deposit for the loss of rent he incurred. The Landlord is required to repay the deposit or make a claim against it by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing. If the Landlord does neither, the Tenants are at liberty to reapply for double the amount of their security deposit.

Conclusion

The Tenants provided insufficient evidence to demonstrate that they served their forwarding address to the Landlord in writing or served in accordance with Section 88 of the Act. The Tenants' Application for the return of their security 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 *Residential Tenancy Act*.

Dated: August 20, 2020

Residential Tenancy Branch