



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. this date by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation, or the tenancy agreement; a monetary order for return of all or part of the security deposit; and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing and one gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the application and notice of this hearing and evidentiary material (the Hearing Package) on July 17, 2020 by registered mail. The tenant sent the documents to the landlord company and to the property manager. The tenants have provided copies of 2 Canada Post Domestic Customer Receipts as well as a Canada Post cash register receipt bearing that date and 2 tracking numbers. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*. All evidence of the tenants has been reviewed and is considered in this Decision.

Issues to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for time spent attempting to recover the security deposit from the landlord, and other associated costs?
- Have the tenants established a monetary claim as against the landlord for return of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on March 30, 2020 and expired on April 30, 2020 thereafter reverting to a month-to-month tenancy which ultimately ended on June 30, 2020. Rent in the amount of \$3,500.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$250.00. The rental unit is the top floor of a house, and a copy of the tenancy agreement has been provided as evidence for this hearing.

No move-in or move-out condition inspection reports were completed, but the property manager inspected with the tenants at move-out and said it was fine and the landlord would return the security deposit soon. Telephone was the only method of communication with the property manager, texting or phoning. On July 3, 2020 the tenant texted the property manager asking about the security deposit. He did not reply so the tenant called him, but he didn't pick up the phone. The tenant called the owner who said that the property manager had to do some cleaning and he would direct the property manager to answer the tenant's calls, but he didn't despite many more attempts to contact him.

On July 13, 2020 the tenant sent a text to the owner which contained the tenant's forwarding address. The owner said he was keeping \$150.00 of the security deposit, and the tenant received \$100.00 on July 13, 2020 by e-transfer. The tenants claim double recovery of the balance of the security deposit of \$150.00, for a total of \$300.00, as well as 4 hours of their regular wages in sending text messages, phone calls, the time to prepare for this hearing and sending registered mail documents and have provided a spreadsheet showing their regular earnings and at 4 hours each, the claim is \$340.38, in addition to recovery of the \$100.00 filing fee. The tenant's total claim is \$740.38.

The tenant submits that the landlord received the tenants' forwarding address in writing in a text message on July 13, 2020 as well as in this Application for Dispute Resolution.

Analysis

The *Residential Tenancy Act* requires a tenant to provide the landlord with a forwarding address in writing within 1 year after the tenancy ends, and if the tenant doesn't do so, the landlord may keep it.

Section 88 of the *Act* specifies that documents that are required to be provided to a party must be given in certain ways:

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:

- (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;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Due to the Covid-19 Pandemic another special order has been made:

The Director's Order dated March 30, 2020 states that until the declaration of state of emergency expires, Section 88 or 89 documents can be served by email with acknowledged receipt; or email with a response but without identifying a problem of transmission; or by email if person served has routinely used that email, and is thereby deemed to have been served in 3 days.

Providing a forwarding address in a text message does not suffice, specifically when the person it was sent to refuses or fails to reply.

The tenant also submitted that the landlord has the tenants' forwarding address in the Application for Dispute Resolution. I agree the tenants have proven that the landlord was served, however a forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and is not be deemed as providing the landlord with the forwarding address.

I find the tenant's application with respect to recovery of the security deposit to be premature as the tenants have not provided the landlord with a forwarding address in writing in accordance with Section 88, and I dismiss the application with leave to reapply.

The *Act* also allows for recovery of a filing fee if an applicant is successful, but not for time spent to collect a security deposit or to make the Application for Dispute Resolution or to prepare for the hearing. I dismiss that portion of the tenants' application, and because the tenants have not been successful, the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application for a monetary order for return of the security deposit is hereby dismissed with leave to reapply.

The balance of the tenants' application is hereby dismissed without 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 27, 2020

Residential Tenancy Branch