



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on September 3, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Compensation for loss or other money owed.

Both Tenants were present for the hearing, as was an agent for the Landlord. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence and did not take issue with the service of these packages. I find both parties sufficiently served each other with their evidence for the purposes of this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to compensation for loss or money owed?

Background and Evidence

The parties confirmed the tenancy started several years ago, and ended abruptly on January 18, 2020, when the rental unit flooded. The Landlord explained that the tenancy was frustrated because the unit was not inhabitable, and it would take at least 3 months to remediate it. The Tenants stated they moved out on January 18, 2020. It is not clear when the keys were returned.

The parties agree that monthly rent was \$1,823.90, and was due on the first of the month. The landlords held a security deposit of \$800.00. The Tenants stated that they provided their forwarding address by way of an email to the Landlord, which they sent on January 27, 2020. The Landlord confirmed getting a copy of this email on that same day. The parties had multiple back and forth exchanges via email regarding the tenancy. The Landlord stated that they mailed the Tenants a cheque on February 20, 2020, for \$1,623.62, which included the \$800.00 security deposit, plus a per diem rent refund for the last part of January (after the unit flooded).

The Tenants confirmed they got the cheque, but take issue with the fact that it was sent nearly a month later, which caused them troubles when looking for a new place to live. The Tenants are seeking \$800.00 pursuant to section 38 of the Act, because the Landlord returned the security deposit after the allowable 15 days.

Analysis

Based on the documentary evidence 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 the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on January 18, 2020. There is no dispute that the tenancy ended this day, as the rental unit was no longer inhabitable after the flood. I find this date reflects the end of the tenancy.

The Landlord confirmed that she got the Tenants' forwarding address on January 27, 2020, via email. I find the Landlord received the Tenants' forwarding address, in writing, the same day she says she received the email from the Tenants.

In determining that the Landlord received the Tenant's forwarding address "in writing" when it was sent by email, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

I was further guided by section 6 of the *Electronics Transactions Act*, which stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by text message or email is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the email message in which the Tenants provided their forwarding address, I find that the Landlord was sufficiently served with the Tenant's forwarding address, as of January 27, 2020.

In reaching the conclusion that the forwarding address was sufficiently served by email message I was influenced, to some degree, by the Landlord's testimony that they communicated with the Tenant via email. This satisfies me that the Landlord was not averse to communicating with the Tenants by email message.

Therefore, the Landlord had until February 11, 2020, to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. Although the Landlords sent the security deposit back on February 20, 2020, I find this was not within the allowable 15 day window. As such, I find the Landlord breached section 38(1) of the Act, and must pay the Tenant for double the security deposit, pursuant to section 38(6) of the Act.

I find the Tenants are entitled to recover double the amount of the security deposit (\$800.00 x 2), previously held by the Landlord, less the amount the Landlord has already given back (\$800.00). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I make the monetary order as follows:

| Item | Amount |
|---|-----------------|
| Return of Double security deposit (\$800.00 x 2) | \$1,600.00 |
| Filing Fee | \$100.00 |
| Less: Returned Portion of Security Deposit | (\$800.00) |
| Total Monetary Order | \$900.00 |

Accordingly, pursuant to section 67 of the *Act*, I grant the above monetary order based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenants a monetary order in the amount of **\$900.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: September 03, 2020