



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the landlords: MNDL-S, FFL
For the tenants: MNSDS-DR, FFT

Introduction

On September 14, 2020 the landlord submitted an Application for Dispute Resolution (the “landlord’s Application”) requesting monetary compensation and reimbursement of the filing fee.

On September 16, 2020 the tenants submitted their Application (the “tenants’ Application”) requesting a return of the security deposit they paid at the start of the tenancy. They also requested reimbursement of the filing fee. The Notice of Dispute Resolution for this hearing was provided to the tenants on September 22, 2020.

The tenants’ Application here was filed initially as a Direct Request. The matter proceeded by way of a participatory hearing because the tenants’ Direct Request application cannot be considered by that method when there is a cross-application by the landlord in place.

The matter proceeded to a hearing pursuant to section 74(2) of the *Act* on January 7, 2021. In an Interim Decision dated January 8, 2021, I adjourned this matter to ensure the landlord’s attendance and each party’s disclosure of evidence to the other. The matter reconvened on January 20, 2021.

Preliminary Matters

In the initial hearing, a contact of the landlord attended to announce the landlord could not attend due to an emergency. That contact also stated the landlord did not receive any evidence from the tenants in advance of the hearing.

At that hearing, the tenants also provided they received no evidence from the landlord.

In the Interim Decision I provided instructions to both parties that service of evidence must occur in line with the *Residential Tenancy Branch Rules of Procedure*. When they filed their Applications, both parties provided an address, and this was printed on each Notice of Dispute Resolution. I advised this was a legitimate address to facilitate service by registered mail. I provided that at the outset of the reconvened hearing I would ensure that each party served the other.

In the reconvened hearing, the tenants were in attendance on the 1:30 p.m. scheduled call. An agent of the landlord “DW”, as named on the landlord’s Application, attended and stated their name; however, their statement was faintly audible. This party then did not respond to direct questions and exited the call. At 1:36 p.m., the same party DW entered, faintly stated their name to enter the call, and again could not answer direct questions. A few moments later they again exited the call. I ensured throughout the remainder of the call that this party had not entered again. The call in its entirety with the tenants present lasted until 1:55 p.m. and the landlord did not re-enter the call.

The Interim Decision gave instruction to both parties that an agent may attend on their behalf. The *Residential Tenancy Branch Rules of Procedure* and s. 74(4) of the *Act* also provide that a party may be represented or assisted. Given the time between the Interim Decision and the reconvened hearing, I find the landlord had the opportunity to arrange for another agent or assistant to enter the call.

In the reconvened hearing, the tenants presented they made three attempts at service of their evidence to the landlord. They also provided copies of invoices and tracking information. These are:

- 1) by courier to the office business address as it appears on the tenancy agreement, on September 23 – the next day, the tracking information from the courier was that it was delivered, but no one picked up the package;

- 2) by registered mail, on September 24, to the address and agent name provided to the tenants by the landlord on the landlord's Notice of Dispute Resolution – the recipient was not located at this address and the package was returned to the tenants;
- 3) by registered mail, on January 8, 2021, to the same agent name and address as they appear on the landlord's Notice of Dispute Resolution – the recipient was not located at this address and the package was returned to the tenants two days prior to the reconvened hearing.

At both the initial hearing and the reconvened hearing, the tenants stated they did not receive evidence from the landlord. They did receive the landlord's Notice of Dispute Resolution Proceeding that was generated from the landlord's Application.

The *Residential Tenancy Branch Rules of Procedure* give specific directions on the provision of evidence. Rule 3.14 provides that, emphasis added:

documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch . . . not less than 14 days before the hearing.

Further, Rule 3.16 provides that “

the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rule 3.11 provides that where a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

The landlord had full opportunity to arrange for an agent to attend on their behalf and was afforded full opportunity to provide their evidence to the tenants. The landlord did not provide their evidence to the tenants as required and did not attend the hearing to demonstrate they served their evidence to the tenants.

In line with Rule 3.11, I refuse to consider the evidence attached to the landlord's Application as provided to the Residential Tenancy Branch.

Rule 7.3 provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without

leave to reapply. On this basis, I dismiss the landlord's Application for monetary compensation. The landlord does not have leave to reapply on this issue.

Issue(s) to be Decided

- Are the tenants entitled to an Order granting a refund of the security deposit pursuant to section 38 of the *Act*?
- Are the tenants entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The tenants submitted a copy of the tenancy agreement for this hearing. The tenants in the hearing confirmed the details. On the tenants' Application, they provided that they signed the agreement; however, "the agent or the owner . . . never gave us back the signed agreement even [though] we requested [it] many times."

The copy of the agreement shows the tenants signed on August 31, 2019. This is for the fixed-term tenancy starting on September 1, 2019 and ending on August 31, 2020. The rent was \$10,000 per month. The tenants paid the security deposit of \$5,000 on August 31. The tenants provided a copy of a bank deposit receipt showing payment of 12 months rent in advance, as well as the security deposit amount.

The tenancy ended on August 31, 2020. The tenants gave notice to the landlord in advance that they did not wish to continue the tenancy. In the tenants' description, the agent they spoke to in regard to the tenancy on a regular basis (and the party who signed the initial condition inspection report) asked if they wanted to continue. By text message they replied they did not. Also by way of an in-person conversation, the tenants informed the agent they would not continue the tenancy, and they requested their security deposit returned.

The tenants provided a string of emails from August 13 to September 15, 2020. By mid-August they were arranging to have a move-out inspection with the agent on August 31. By 10:06 p.m. on August 31, the tenants stated:

Per the inspection check list signed by both of us, there is no any outstanding issues/items, so we are expecting the full deposit refund at \$5000. We prefer e-transfer, but if you mail a bank draft, the address is [tenants' forwarding address].

On September 10, the tenants made a second request for return of the deposit in the form of a "reminder" to the agent. On September 15, 2020 the tenants sent three reminders, the first of which states "Please make sure you will give us \$5000 deposit back today to avoid any legal actions."

By September 14, 2020 the landlord filed their application to make a claim against the deposit. The tenants received notice of the landlord's claim after the landlord forwarded that notice on to the tenants after September 21, 2020.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

From the evidence I can establish as fact that the tenant provided their forwarding address to the landlords on August 31, 2020. The evidence for this is the tenants' email evidence showing the landlord received their note with the forwarding address. I am satisfied this email was the primary means of communication between the tenants and the agent, as revealed by the earlier communication from the agent to the tenants using the same address.

I find the landlord properly applied for dispute resolution within the 15 days set out in the *Act* on September 14, 2020. The landlord complied with subsection (1) set out above.

The landlord's claim against the security deposit is dismissed without leave to re-apply. The landlord is not entitled to reimbursement against the security deposit. As such, I find they must return the full security deposit amount of \$5,000 to the tenants as per the *Act*.

As the tenants were successful in this application, I find the tenants are entitled to recover the \$100.00 filing fee they paid for this application.

Conclusion

I order the landlord to pay the tenant the amount of \$5,100. I grant the tenants a monetary order for this amount. This monetary order 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 *Act*.

Dated: January 22, 2021

Residential Tenancy Branch