



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNDL-S, FFL
 TT: MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlords’ Application for Dispute Resolution was made on November 4, 2020 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for damage.
- an order to retain the security deposit.
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on November 5, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30 PM on February 22, 2021 as a teleconference hearing. The Tenant C.B. attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Landlords. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that Tenant and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.3 of the Rules of Procedure states that if a party does not attend the hearing, the hearing may proceed without that party or the application may be dismissed with or without leave to reapply. As no one attended the hearing for the Landlords, I dismiss the Landlords' Application without leave to reapply.

Preliminary Matters

At the start of the hearing, the Tenant stated that she did not served a copy of the Tenants' hearing package or documentary evidence to the Landlords.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

As the Landlords were not served with the Tenants' Application, but attended the hearing, I dismiss their Application with leave to reapply. However, since the Landlords had applied to retain the Tenants' security deposit, and the Landlords' Application was dismissed, I must still consider if the Tenants' are entitled to the return of their security deposit. Essentially, the Tenants' Application for the return of their security deposit was unnecessary.

Issue(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

The Tenant stated that the tenancy began on July 4, 2019. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$2,462.00. The Tenants paid a security deposit in the amount of \$1,200.00 which the Landlords continue to hold. The Tenant stated that the tenancy ended on October 21, 2020. The Tenant stated that on October 29, 2020 she provided the Landlords with her forwarding address via email. The Tenant stated that they have not yet received their deposit from the Landlords and did not consent to the Landlords retaining any amount.

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.

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 Tenant stated that she provided the Landlords with her forwarding address via email on October 29, 2020. I find that this is not an approved method of service and does not constitute providing the Landlords with the Tenants' forwarding address in writing. It is the Tenants' responsibility to provide the Landlords with their forwarding address in writing in accordance with Section 38(1) of the *Act*. 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 Landlords may keep the Deposit and the Tenants' right to the deposit is extinguished.

Should the Landlords receive the Tenants' forwarding address in writing, they must repay the deposit or make a claim against it by filing an application for dispute resolution within 15 days after receiving a Tenants' forwarding address. It shall be noted that the Landlords' Application was dismissed without leave to reapply as they did not attend the hearing to pursue their claims.

Conclusion

No one attended the hearing for the Landlords; therefore, the Landlords' Application is dismissed without leave to reapply. The Tenants have not yet served their forwarding address to the Landlords in writing; therefore, they are not yet entitled to the return of their 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: February 23, 2021

Residential Tenancy Branch