



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0752401 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing was reconvened from an Interim Decision dated February 11, 2021 (the “Interim Decision”) in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord states that while it received the Interim Decision from the Residential Tenancy Branch (the “RTB”), it did not receive the Tenants’ application for dispute resolution, notice of hearing and evidence (the “Hearing Package”). The Tenant states that it obtained a decision dated February 26, 2021 granting the Tenant an order for service of the hearing package by email (the “Subservice Decision”). The Tenant states that the hearing package and all other materials were sent by email on March 11, 2021. The Tenant provides a copy of that email transmission. The Landlord states that the Interim Decision requires the Tenant to serve the hearing package within 3 days receipt of the Interim Decision. The Landlord confirms that its email address has not changed.

Section 64(2) of the Act provides that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow

other decisions under this Part. Although the Interim Decision sets out a date for service, the director is not bound by this Decision in making the Subservice Decision. Although the Subservice Decision does not set out a date by which the Tenant must serve the package by email, given the Tenant's supported evidence that it was sent to the Landlord's email on March 11, 2021, I find on a balance of probabilities that the Landlord was duly served with the hearing package and within a reasonable time for the Landlord to review and respond. I make this finding regardless of whether the Landlord chose to open the email or not.

The Tenant states that the Landlord did not provide any evidence to the Tenants. The Landlord states that it sent its evidence to the Tenant by registered mail on February 11, 2021. The Landlord provides the tracking number for this mail, repeated twice for certainty at the hearing, and I note that this postal evidence indicates that no such tracking number exists.

Rule 3.15 of the RTB Rules of Procedure provides that any evidence that a respondent intends to rely on at the hearing must be provided to the applicant. As the Landlord's testimony of sending the evidence by registered mail conflicts with the Landlord's evidence of the tracking number for that mail, and given the Tenant's evidence that no evidence was received, I find on a balance of probabilities that the Landlord did not serve its evidence to the Tenant. I therefore decline to consider the Landlord's documentary evidence for the purposes of its rebuttal of the Tenant's evidence.

Issue(s) to be Decided

Are the Tenants entitled to return of double the combined security and pet deposit?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on December 1, 2019 and ended on November 30, 2020. Rent of \$1,600.00 was payable

monthly. At the outset of the tenancy the Landlord collected \$675.00 as a security deposit and \$675.00 as a pet deposit.

The Tenant states that on December 8, 2020 the Tenants provided their forwarding address to the Landlord by posting the document on the front door of the building and that all units in the building are under tenancies with the Landlord. The Tenant states that Tenant MS witnessed this service, that they texted the Landlord's agent "V" on December 8, 2020 at 9:37 p.m. of that service and that V replied on December 9, 2020 at 8:53 a.m. thanking the Tenant.

The Landlord states that V does not act for the Landlord and is only a resident of one of the units in the building. The Landlord states that it did not receive any forwarding address. The Tenant states that during the tenancy V was the contact for the Landlord, that this contact was posted in the building and that all communications to the Landlord went through V. The Landlord states that V did act for the Landlord in relation to garbage and the laundry.

The Tenant states that no move-in inspection was conducted. The Landlord states that they did conduct a move in inspection with Tenant MS with a report completed and provided to the Tenants with their lease package. The Landlord states that it provided a copy of the move-in report with its evidence. It is noted that while the Landlord's evidence that was submitted may not be considered, this document is not among the Landlord's evidence that was submitted to the RTB.

The Landlord states that it did not return the security deposit as the Tenants left damages to the unit and that the Tenants did not reply to the Landlord's email about that damage.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Section 1(a)(iii) of the Act defines a landlord as including a person who, on behalf of the landlord, exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. Overall, I found the Landlord's testimony to be unreliable. For this reason, I prefer the Tenant's overall evidence. Given the Tenant's evidence that V acted for the Landlord in relation to tenancy communication with the Landlord and as the Landlord did agree that V acted for the Landlord in relation to services and facilities, I find on a balance of probabilities that V is a Landlord as defined under the Act and therefore capable of receiving and dealing with the Tenants' forwarding address. Given the Tenant's preferred evidence I find that their forwarding address was received by V on December 9, 2020. As the Landlord did not return the deposits or make an application to claim against the deposits within the time allowed, I find that the Landlord must now pay the Tenants double the combined security and pet deposit plus zero interest of **\$2,700.00**. As the Tenants have been successful with their claim, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,800.00**.

The Landlord remains at liberty to make an application for dispute resolution if the Tenants caused the Landlord any loss or damage arising from the tenancy.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,800.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: May 05, 2021

Residential Tenancy Branch