



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gary Manor Holdings Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The landlord testified that they have not served the tenants with the notice of dispute resolution proceeding. The tenants confirm that they were not served by the landlord and became aware of the dispute resolution proceeding when they contacted the branch on their own initiative.

The landlord confirmed receipt of the tenants' evidentiary materials. Based on the testimonies I find the landlord was served with the tenants' evidence in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Background and Evidence

The parties agree on the following facts. This fixed-term tenancy began on May 15, 2021. Monthly rent was \$1,650.00 payable on the first of each month. A security deposit of \$825.00 and pet damage deposit of \$825.00 were paid at the start of the tenancy and are still held by the landlord. The tenancy ended on June 15, 2021 with the tenants providing a forwarding address in writing on that date. The tenants did not provide written authorization that the landlord may retain any portion of the deposits.

The landlord filed their application for dispute resolution with the Branch on June 28, 2021. The landlord testified that they were never provided with a copy of a Notice of Hearing to serve on the tenants. The landlord submits that the initial email from the Branch of July 16, 2021 was found in their junk mail folder with no attachments on August 20, 2021. The landlord says that despite requesting the Branch re-send the email and provide a copy of the Notice of Hearing they were never given a copy to serve on the tenants.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the parties agree that the tenants provided a forwarding address in writing on June 15, 2021 when the tenancy ended. The landlord filed their application for dispute resolution on June 28, 2021, within the 15 days provided under the *Act*. I find the landlord was within the statutory timeline to file their application for authorization to retain the security and pet damage deposit for this tenancy.

An application for dispute resolution must be served on the other party. Section 89(1) sets out the manner by which an applicant may serve another party.

The landlord testified that they have not served the tenant in a manner consistent with the Act or at all. The tenants confirm that they have not been served by the landlord. The landlord says that they were not provided a copy of the Notice of Hearing by the Branch with which to serve the tenants.

Branch records show that the Notice of Hearing was sent to the email address provided by the landlord on July 16, 2021. The landlord confirmed that they found the email in their junk mailbox on August 20, 2021 but claims there was no Notice of Hearing attached to the email. Even if this were the case the landlord had ample opportunity to request an additional copy of the Notice of Hearing and to serve the tenants. I do not find the landlord's testimony that the Branch refused or declined to provide a Notice of Hearing to be credible or reasonable. I note that the landlord attended the scheduled hearing so they must have obtained the hearing information and access codes. The Branch Dispute Management System automatically generates a copy of the Notice of Hearing and the landlord could have easily downloaded a copy to print and serve on the tenants at any time prior to the hearing.

The landlord took no steps to make the tenants aware of the scheduled hearing. Instead the landlord simply waited 6 months until the date of the hearing without taking any further steps to obtain a copy of the Notice of Hearing or to serve the tenants.

Based on the evidence I find the landlord has failed to serve the tenants in a manner consistent with the Act or at all. Consequently, I dismiss the landlord's application.

As noted in Residential Tenancy Policy Guideline 17 at Paragraph C-1:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Accordingly, as I have dismissed the landlord's application to retain the deposits, I order the return of the security and pet damage deposit for this tenancy in the total amount of \$1,650.00 to the tenants.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,650.00, representing the return of the full security and pet damage deposit for this tenancy. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application for a monetary award is dismissed with leave to reapply.

The balance of the landlord's application is 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: January 18, 2022

Residential Tenancy Branch