



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310046064: MNRL-S, FFL

File #310048351: MNSDS-DR, FFT

Introduction

The Landlord applies for a monetary order for unpaid rent pursuant to s. 67 of the *Residential Tenancy Act* (the “*Act*”). The Landlord also seeks the return of their filing fee pursuant to s. 72.

The Tenants apply for the return of their security deposit pursuant to s. 38 of the *Act* and for the return of their filing fee pursuant to s. 72. The Tenants application was originally made as a direct request application.

J.M. appeared as Landlord. S.A. and A.S. appeared as Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenants advise that the Landlord was served with their Notice of Dispute Resolution and evidence by way of registered mail sent on September 17, 2021. A registered mail tracking receipt was provided by the Tenants as proof of service, which indicates delivery on September 20, 2021. I find that the Tenants application materials were served in accordance with s. 89 of the *Act*.

Preliminary Issue – Dismissal of Landlord's application

The Landlord indicated that she did not serve her Notice of Dispute Resolution nor her evidence on the Tenants and indicated that she did so in the hopes that she and the Tenants could resolve their dispute. Review of Residential Tenancy Branch records shows that the Landlord filed her dispute on August 12, 2021.

Pursuant to Rule 3.5 of the Rules of Procedure, an applicant must demonstrate service of their application materials at the hearing. The Landlord admits that her application materials were not served at all. I take note of the guidance within Policy Guideline #12 with respect to circumstances in which service has not been completed.

I find that the Landlord failed to serve her application materials in accordance with s. 89 of the *Act*. As a result of the Landlord's failure to serve her materials, I dismiss her application with leave to reapply except for her claim for the return of her filing fee, which is dismissed without leave to reapply.

The hearing proceeded strictly with respect to the Tenants application.

Issue(s) to be Decided

- 1) Are the Tenants entitled to the return of double of their security deposit?
- 2) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details of the tenancy:

- The Tenants began to occupy the rental unit on July 1, 2015;
- Immediately prior to the end of the tenancy, rent of \$2,175.85 was due on the first day of each month.
- The Landlord holds a security deposit of \$1,148.00 in trust for the Tenants.

A copy of the written tenancy agreement was put into evidence by the Tenants, which I am told was an updated tenancy agreement. The tenancy agreement shows that the

tenancy was for a 1-year term beginning on April 1, 2020 and reverting to month-to-month after March 31, 2021. The tenancy agreement also shows that the security deposit was paid to the Landlord on June 26, 2015.

The parties described various issues with respect to water damage to the rental unit, which was caused by a leak in an adjacent unit. The damage and subsequent repairs appear to have precipitated the end of the tenancy.

The Tenants say that they notified the Landlord on June 10, 2021 that they would be leaving the rental unit due to the ongoing repair process. I have reviewed the correspondence provided by the Tenant and a text message dated June 11, 2021 indicates that the Tenants were actively looking for another place to rent and that they would update the Landlord as soon as possible.

A message dated June 26, 2021 indicates that the Tenants were still looking at places and that they would most likely be able to move-out by July 1, 2021. A message dated June 30, 2021 confirmed that the Tenants would be “moving out in the next couple of days”.

The Tenants indicated at the hearing that they had substantially moved out on July 5, 2021 and handed over the keys to the Landlord on July 9, 2021. These details were confirmed by the Landlord.

The Tenants indicate that they provided the Landlord with their forwarding address by way of registered mail sent on August 10, 2021. The Landlord confirms receiving the Tenants forwarding address on August 13, 2021.

The Tenants indicate there was no move-in or move-out inspection. The Landlord says a move-in inspection was conducted and confirms no move-out inspection was completed. No copy of the inspection report, if one exists, was provided.

As mentioned above, the Landlord applied for unpaid rent from the Tenants and filed her application on August 12, 2021.

Analysis

The Tenants seek the return of their security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

Policy Guideline 17 provides guidance with respect to parties making claims against the deposit and the various effects if a party's right to the security deposit is extinguished. Presently, the Landlord admits that no end of tenancy inspection report was conducted, which would lead to the conclusion that their right claim against the security deposit is extinguished by virtue of s. 36(2) of the *Act*. However, Policy Guideline 17 states the following:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
 - to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
 - to file a claim against the deposit for any monies owing for other than damage to the rental unit;
 - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
 - to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.
10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

(Emphasis Added)

I accept that the Landlords right to claim against the security deposit for damages to the rental unit is extinguished. However, this does not preclude the Landlord from claiming against the security deposit for other monies owing, such as rent. This is clearly laid out within Policy Guideline 17.

Presently, the Landlord did file an application to claim against the security deposit, with the application being made on August 12, 2021. The Tenants argue that this ought to be disregarded as it was not served. The Landlord argues that despite her failure to serve her application, the Tenants were aware of her application by virtue of the fact that their application was originally filed by way of direct request and was set for a participatory hearing.

With respect to the parties competing arguments on whether the Landlord complied with her obligations under s. 38(1), I note that the wording of the section states that a landlord must “make an application for dispute resolution claiming against the security deposit or pet damage deposit”. It does not specify that a landlord must file and serve the application.

I do not accept the Tenants argument that the Landlord’s application should somehow be disregarded by mere fact that it was not served. The argument runs contrary to the plain reading of s. 38(1). I am further persuaded by the Landlord’s argument that the Tenants were aware of the Landlord’s application as their matter was scheduled to a participatory hearing.

The parties agree that the Landlord received the Tenants’ forwarding address on August 13, 2021, which occurred after the tenancy ended in early July 2021. The Landlord made an application claiming against the security deposit for unpaid rent on August 12, 2021. I find that the Landlord filed her application within the time limits proscribed by s. 38(1) of the *Act*. Given that the Landlord complied with s. 38(1), the Tenants claim for double of the security deposit under s. 38(6) is dismissed.

As mentioned above, the Landlord’s application was dismissed with leave to reapply for want of service. As there is no claim against the security deposit before me, I order that the Landlord return the Tenants security deposit of \$1,148.00. No interest is applicable to the security deposit given the relevant timeframe.

Conclusion

The Landlord’s application is dismissed with leave to reapply as she failed to serve the Tenants with her application.

Despite the Landlord's failure to serve the application, I find that it was made on August 12, 2021 such that she complied with s. 38(1) of the *Act*. The Tenants claim for double their security deposit under s. 38(6) is dismissed.

As the Landlord's application was dismissed, there is no claim against the security deposit before me. On this basis, I order that the Landlord return the Tenants' security deposit in the amount of \$1,148.00.

As the Tenant was partially successful in their application, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1), I order that the Landlord pay \$100.00 to the Tenants for their filing fee.

Taking into account the amounts listed above and pursuant to s. 67, I order that the Landlord pay **\$1,248.00** to the Tenants for the return of their filing fee and their security deposit.

It is the Tenants' obligation to serve the order on the Landlord. If the Landlord does not comply with the monetary portion of this order, it may be filed with the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: February 28, 2022

Residential Tenancy Branch