Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #210050733: MNDL-S, FFL
File #210055045: MNSDB-DR, FFT

Introduction

The Landlords apply for the following relief under the *Residential Tenancy Act* (the "*Act*"):

- To claim against the security deposit to pay to repair damages caused by the Tenants under ss. 38 and 67; and
- Return of their filing fee pursuant to s. 72.

The Tenants file their own application in which they seek the following relief under the *Act*:

- Return of their security deposit and pet damage deposit pursuant to s. 38; and
- Return of their filing fee pursuant to s. 72.

The Tenants' application was filed as a direct request but was scheduled for a participatory hearing to coincide with the Landlords' application.

K.F. and D.S. appeared as the former Landlords. N.G. and K.S. appeared as the former 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants indicate that they served their Notice of Dispute Resolution and evidence by way of registered mail sent on November 24, 2022. The Landlords acknowledge receipt of the Tenants' application materials. I find that the Tenants' Notice of Dispute Resolution and evidence was served in accordance with s. 89 of the *Act* and was acknowledged received by the Landlords.

The Landlords advise that they served their evidence on the Tenants by way of email sent on April 26, 2022. The Tenants acknowledged receipt of the Landlords' evidence and raised no objections to service via email. I find that pursuant to s. 71(2) of the *Act* that the Tenants were sufficiently served with the Landlords evidence.

Preliminary Issue – Landlords' Application

The Landlords indicate that they did not serve the Notice of Dispute Resolution. The Tenants confirm that they did not receive the Landlords application. I am told by the Landlords that they received the Notice of Dispute Resolution near-to thanksgiving and could not serve their application within 3-days of receiving it. They indicate that they were advised by information services at the Residential Tenancy Branch that it needed to be served within the 3-day window.

Rule 3.1 of the Rules of Procedure does specify that an applicant must serve the Notice of Dispute Resolution within three-days of receiving it from the Residential Tenancy Branch. This Rule is generally applied with some flexibility provided that the Notice of Dispute Resolution is served as soon as is practicable and is served with sufficient time for the responding party to review it and provide a response. I note that the Notice of Dispute Resolution was provided to the Landlords on October 7, 2021.

I cannot comment on what the Landlords indicate they were advised by information services. However, the Landlords could not explain why they failed to serve their application in the intervening months between October 7, 2021 and when the hearing was held on May 10, 2022. I am told the Tenants filed a prior application and that this had some sort of impact on the Landlords failure to serve their Notice of Dispute Resolution. I have reviewed the file number provided for the prior application, which indicates it was dismissed with leave to reapply on October 21, 2021. The dismissal of the Tenants' prior application does not explain why the Landlords did not serve their application in the months after the Notice of Dispute Resolution was provided to them or why it was not done in the months after the Tenant's prior application was dismissed.

Policy Guideline #16 provides guidance with respect to service of documents under the *Act*. It specifies that when a party has not served an application for dispute resolution, the matter may proceed, be adjourned, or dismissed with or without leave to reapply. Presently, I cannot proceed with the Landlord's application in the face of the acknowledged fact that they did not serve it on the Tenants. To proceed with the application would be procedurally unfair to the Tenants as they received evidence without a context for what the Landlords are claiming in their application.

Accordingly, I dismiss the Landlords' application for compensation for damages to the rental unit with leave to reapply. Their claim for return of their filing fee is dismissed without leave to reapply as they failed to serve their application on the Tenants. The dismissal does not extend any time limitation that may apply under the *Act*.

The hearing proceeded strictly on the Tenants' application.

Issue(s) to be Decided

1) Should the security deposit be returned?
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 with respect to the tenancy:

- The Tenants took occupancy of the rental unit on February 1, 2021.
- The Landlords obtained vacant possession on August 30, 2021 after obtaining the keys to the rental unit from the Tenants.
- Rent of $1,400.00 was due on the first of each month.
- The Landlords hold a security deposit of $700.00 and a total pet damage deposit of $700.00 in trust for the Tenants.

A copy of the written tenancy agreement was put into evidence by the Tenants.

The parties confirmed there was no written move-in or move-out condition inspection report. The Tenant K.S. indicated that there was an informal move-out inspection where

he and the Landlord K.F. walked through the rental unit together and discussed its state.

On September 12, 2021, the Landlords e-transferred $857.75 to the Tenants for the return of their security deposit and pet damage deposit. An email provided by the Tenants sent to them by K.F. indicates that the Landlord made the following deductions from the security deposit and pet damage deposit:

- Cleaning fees: $262.50
- Garden clean-up: $99.75
- Baseboard repair/paint: $50.00
- Damage to appliances: $130.00

The Tenants indicate they did not consent to these amounts being withheld. They deny that the rental unit was delivered in a state that warranted such deductions.

The Landlord explained that these deductions were made on the basis that the rental unit was dirty, the garden had weeds, that a baseboard was damaged by the Tenants pet, the dryer had an ink stain in the drum, and the stovetop had been scratched by a razor.

The Landlord provides photographs of the rental unit. No receipts were provided, though I am told there is a receipt for the cleaning services. The yard clean-up was based on the fee the Landlord's horticulture business would have charged for the service. The appliance costs were estimated and no repairs were undertaken, though some cleaning supplies were purchased but never used to clean the dryer drum. The baseboard repair was money the Landlord say was provided to a friend to repair it.

In the Tenants' evidence, there are proof of service forms indicating that they provided the Landlords with their forwarding address on July 31, 2021. At the hearing, I was told that they sent the Landlords an email on August 1, 2021 that indicated the deposit could be returned to them electronically. The Tenants acknowledge the email did not include their physical forwarding address, though argue that the Landlords received their forwarding address as part of the dispute process.

The Landlord K.F. denies receiving the Tenants forwarding address on August 1, 2021, though acknowledges receiving it on September 23, 2021, presumably as part of the Tenants' prior application.

Analysis

The Tenants apply for the return of the security deposit, pet damage deposit, and filing fee.

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 of the *Act*.

Section 23(4) of the *Act* imposes an obligation on a landlord to complete a move-in condition inspection report in accordance with the Regulations. Under s. 24(2) of the *Act*, a landlord's right to claim against the security deposit is extinguished if the landlord does not complete the inspection report and give it to the tenant.

Presently, the Landlords acknowledge no formal move-in condition inspection report was conducted. Accordingly, I find that their right to claim against the security deposit and pet damage deposit is extinguished under s. 24(2) of the *Act*. Having regard to s. 38(1) of the *Act*, the practical effect of the extinguishment of the Landlord's right to claim against the deposits for damages to the rental unit is that they had to either return the deposits or claim against them for something other than damages to the rental unit within the 15-day window.

I would like to make it clear that the Landlords' extinguished right to claim against the deposits does not forego their right to seek compensation for damages under s. 67 of the *Act*. Simply, they cannot do so while claiming against the security deposit and pet damage deposit. This is explained in greater detail within Policy Guideline #17.

The question remains whether the 15-day return-or-claim period imposed by s. 38(1) of the *Act* has been triggered. The Tenants incorrectly indicated in their proof of service forms that the Landlords received their forwarding address on July 31, 2021, a fact they admitted at the hearing. The Tenants indicate that they have never provided the Landlords with their forwarding address except through the dispute resolution process. The Landlords acknowledge receipt, however, of the forwarding address on September 23, 2021, which would have coincided with the Tenants previous application. Based solely on the Landlords acknowledged receipt of the Tenants forwarding address, I find that the Tenants provided it to them on September 23, 2021.

Therefore, the Landlord had until October 7, 2021 to either return the deposits in full or claim against them for something other than damages to the rental unit. In this case, the Landlords did neither and claimed against the security deposit for damages to the rental unit on October 3, 2021. As mentioned above, their right to make such a claim was extinguished under s. 24(2) of the *Act*. Further, the Landlords failed to return the deposits in full on September 12, 2021, returning $857.75. They did not have the Tenants consent to do so nor would such consent have been valid by virtue of s. 38(5) of the *Act*. Accordingly, I find that the Landlords failed to comply with their obligations under s. 38(1) of the *Act* with respect to the deposits.

Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit and pet damage deposit within the 15-day window, the landlord may not claim against them and must pay the tenant double their deposits. Giving my findings above, that has occurred here. Accordingly, I find that the Tenants are entitled to double their security deposit and pet damage deposit under s.38(6) of the *Act* less what was returned on September 12, 2021, which in this case is $1,942.25 (($700.00 + $700.00) x 2 - $857.75).

As the Tenants were successful in their application, I find that they are entitled to the return of their filing fee. I order under s. 72 of the *Act* that the Landlords pay the Tenants $100.00 filing fee.

Conclusion

The Landlords' application was not served on the Tenants. I dismiss their claim under s. 67 of the *Act* for damages caused to the rental unit with leave to reapply. Their claim for return of their filing fee under s. 72 of the *Act* is dismissed without leave to reapply.

I found that the Landlords failed to comply with s. 38(1) of the *Act*, giving rise to the Tenants entitlement to the return of double their deposits as per s. 38(6) of the *Act*. Less the amount returned, I order pursuant to s. 38(6) that the Landlords pay the Tenants $1,942.25.

As the Tenants were successful in their application, I order pursuant to s. 72(1) of the *Act* that the Landlords pay their $100.00 filing fee.

Pursuant to s. 67 of the *Act*, I order that the Landlords pay **$2,042.25** to the Tenants, which comprises the total for the return of the deposits and the filing fee as listed above.

It is the Tenants obligation to server the Landlords with the monetary order. If the Landlords do not comply with the monetary order, it may be filed by the Tenants 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: May 11, 2022

Residential Tenancy Branch