



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNR-S, FF
 For the tenant: MNSD-DR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The landlord applied on December 21, 2021, for authority to retain the tenants' security deposit and a monetary order for unpaid rent.

The tenant completed their application on January 19, 2022, under the direct request process for a return of their security deposit, doubled, and recovery of the cost of the filing fee. The tenants' application could not proceed on the ex-parte direct request process, as the landlord's application had already commenced. As a result, the tenants' application was administratively made a cross-application to the landlord's application.

The landlord, the tenant, and the landlord's legal counsel (counsel) attended the hearing. All parties were affirmed.

Preliminary and procedural matters were discussed and as a result, I find it necessary to address those matters first.

Although a significant amount of evidence and submissions were made at the hearing, all of which was reviewed, I have only addressed the evidence relevant to the findings in the Decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Service of the hearing documents –

The landlord confirmed that they had not served the tenants with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) for the hearing, by registered mail or personal service as the tenants' mail kept being returned to the rental unit, and there was no point.

Section 89(1) of the Act requires that an application for dispute resolution 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 documents*];
- (f) by any other means of service provided for in the regulations.

I informed the landlord I would be unable to proceed with a hearing on the landlord's application, due to insufficient service of the application package to the tenants. The landlord had the option of applying for an order for substituted service or still sending the registered mail to the forwarding address with the incorrect postal code provided by the tenants to satisfy the service requirements.

I find the landlord submitted insufficient evidence that their application package was served to the tenants according to the requirements of section 89(1) of the Act. I therefore **dismiss** the landlord's application, **with leave to reapply**, due to service issues as described above.

I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

Tenant's evidence -

The tenant submitted evidence for their application, separately from their application for dispute resolution. The landlord submitted they did not receive the tenant's evidence, although the tenant said the evidence was sent by regular mail.

Although the tenant was entitled to serve evidence by regular mail under section 88 of the Act, I find the evidence insufficient due to the conflicting testimony of the parties. As a result, out of an abundance of caution, I decline to consider the tenants' documentary evidence. The hearing proceeded on the tenant's application on the parties' affirmed oral evidence taken at the hearing.

Counsel's submissions and arguments –

Near the beginning of the hearing, it was brought to my attention that the tenant had filed another application for dispute resolution, which involved the tenants' request for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice). The hearing for that other application was set on another date before another arbitrator. The parties were advised that I would not combine the two applications of the tenants and would proceed only on the two matters scheduled before me.

Counsel near the end of the hearing submitted that any monetary award given to the tenants should offset the landlord's claim for damages and cleaning. There was no claim by the landlord before me for monetary compensation other than the request for unpaid rent. I therefore declined to consider this request, as it was unrelated to the matters before me.

Counsel also submitted that the tenant had not provided the correct forwarding address.

Issue(s) to be Decided

1. Are the tenants entitled to a return of their security deposit, that this amount be doubled, and to recovery of the filing fee paid for this application?

Background and Evidence

The tenancy began on February 15, 2020 and ended on December 18, 2021. The tenant submitted that the monthly rent at the beginning of the tenancy was \$2,950 and \$3,000 at the end of the tenancy. The landlord submitted that the monthly rent was

\$2,600, plus \$350 for utilities. The parties agreed that the tenants paid the landlord a security deposit in the amount of \$1,300 and that the landlord has kept the security deposit. Filed in evidence was a copy of the written tenancy agreement.

The tenant submitted they provided their forwarding address verbally and by email on December 18, 2021. The landlord testified and confirmed receipt of the forwarding address verbally and by email, on December 18, 2021.

The tenant stated that they agreed the landlord could keep \$150 from the security deposit for a broken vent cover.

The tenant addressed the issue with their address, saying that there is confusion with the post office as to the correct postal code. The tenant stated two different postal codes, both used by the post office.

I note that the last three digits of the two postal codes provided by the tenant were different than the postal code used by the tenant on their application for dispute resolution. The one used for the application was one digit different from what was provided in the email to the landlord.

The landlord did not agree that \$150 would cover the costs of any damage.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 38(1) of the Act requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenant's forwarding address in writing and the end of the tenancy, whichever is later. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In the case before me, the parties agreed that the tenancy ended on December 18, 2021, and the tenant provided their forwarding address to the landlord on the same day.

Email is not a recognized way of serving documents under the Act, unless approved by Residential Tenancy Regulation 43(1). However, as the landlord confirmed receiving the tenant's forwarding address verbally and, in an email, I find the landlord was sufficiently served with the tenant's forwarding address on December 18, 2021, by section 71 (2)(c) of the Act. Also, the landlord used this address for the tenant on their own application for dispute resolution. While there may have been a clerical error in the last digit of the postal code, the landlord was still obligated to comply with their timeline obligations under the Act.

As a result, I find the landlord had 15 days from December 18, 2021, or January 2, 2022, to file an application claiming against tenants' security deposit or return the tenants' security deposit in full, less any agreed upon deduction.

Section 59(3) states that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. In this case, the landlord filed an application against the tenants, but that application was dismissed due to their failure to serve the tenants as required by the Act. I find that just making an application against the respondent is insufficient without serving the other party as required under the Act. Accordingly, I find the application process was never completed and had the effect of the application never having been made.

As I have dismissed the landlord's application against the tenants' security deposit, I order the landlord to return the tenants' security deposit of \$1,300, less \$150 approved by the tenant, for a total of \$1,150.

I also find that the remaining security deposit of \$1,150 must be doubled, pursuant to section Tenancy Policy Guideline C. 3, as I have found that the landlord has, in effect, not filed a claim against the security deposit within 15 days.

Due to their successful application, I grant the tenants recovery of the filing fee of \$100.

For the above reasons, I find the tenants have established a monetary claim of \$2,400, comprised of their remaining security deposit of \$1,150, doubled to \$2,300 and the filing fee of \$100.

I grant the tenants a monetary order (Order) in the amount of **\$2,400**.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application was dismissed, with leave to reapply, due to the service issues referenced in this Decision.

The tenants' application is granted as I found they are entitled to their remaining security deposit of \$1,150, doubled to \$2,300, and recovery of the filing fee of \$100. The tenants are issued a monetary order (Order) in the amount of **\$2,400**.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 10, 2022

Residential Tenancy Branch