Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Applicants CB (the tenant) and CK and the respondent attended the hearing. The respondent was represented by director RK (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the security deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on November 30, 2020 and ended on November 30, 2021. Monthly rent of $2,100.00 was due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $1,050.00 and a pet damage deposit of $1,050. The tenancy agreement was submitted into evidence. It states:

- landlord's address for service: [redacted for privacy, recorded on the cover page, hereinafter the "ki address"]
- The tenant must provide the landlord with a forwarding address and phone #. Damage deposit will be returned by mail within the required 15 days of the end of the tenancy agreement net of any final utility charges.

Both parties agreed the tenant authorized the landlord to retain part of the pet damage deposit and the landlord returned the balance of the pet damage deposit on November 30, 2021.

Both parties agreed the tenant verbally informed the landlord on November 24, 2021 their forwarding address.

The landlord served documents to the tenants on November 27, 2021 at the forwarding address using a process server, as the landlord did not know if the tenants' forwarding address was the tenants' mailing address. The process server informed the landlord that the tenants were moving to the rental unit, as the tenants were unloading a moving truck.

Both parties affirmed that on November 30, 2021 they agreed that the tenants had to pay the last month's electricity bill (hereinafter "the bill"), which was not available at the time, and that the landlord could retain from the security deposit the amount of the bill.

The tenant attached the tenant's notice of forwarding address (RTB47, submitted into evidence) to the rental unit's front door on December 7, 2022. The tenant stated he attached the form RTB47 to the rental unit's front door because he believes this is the address where the landlord carries on business and because the tenant did not feel safe to serve the landlord at the ki address.

The landlord testified he did not inform that the rental unit is his address for service and that his address for service is the ki address recorded in the tenancy agreement.

The tenant said he texted the landlord a photo showing the form RTB47 attached to the rental unit's front door on December 07, 2021. The landlord denied receiving this text message.

The landlord confirmed receipt of RTB47 on December 23, 2021 and mailed a cheque in the amount of $984.50 to the tenants' forwarding address on December 24, 2021 with a copy of the bill. The tenant confirmed receipt of the cheque on January 02, 2022. Later the tenant affirmed the landlord mailed the cheque on December 25, 2021 and that he received it on January 04, 2022. The tenant stated that maybe he received a copy of the bill with the cheque.

The application submitted on January 01, 2022 indicates the landlord did not return the security deposit. The tenants are seeking a monetary in the amount of $1,050.00, as the landlord returned the security deposit late.

The interim decision states:

> In their Application for Dispute Resolution by Direct Request, the tenants have indicated that the landlord has not returned the security deposit. However, on the Tenant's Direct Request Worksheet, the tenants have indicated that $984.50 of the security deposit was returned to the tenants.
> I find this discrepancy raises a question that can only be addressed in a participatory hearing.

The monetary order worksheet RTB 40, signed by the tenants on February 01, 2022, indicates they authorized the landlord to retain $65.50 from the security deposit ("deduction authorized by tenant: utilities due at the end of the tenancy: $65.50") and that they received the amount of $984.50 on January 05, 2022.

Analysis

Pursuant to section 38 of the Act, the landlord must pay a monetary award equivalent to double the value of the security deposit:

> (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a)the date the tenancy ends, and
> (b**)the date the landlord receives the tenant's forwarding address in writing**, the landlord must do one of the following:
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.
> […]
> 6)If a landlord does not comply with subsection (1), the landlord
> (a)may not make a claim against the security deposit or any pet damage deposit, and
> (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
>
> (emphasis added)

I accept the undisputed testimony that the tenants verbally informed their forwarding address on November 24, 2021 and the tenancy ended on November 30, 2021.

I find that the tenants verbally informing their forwarding address is not adequate service of the forwarding address, per section 38(1)(b) of the Act. I find that it is not relevant for the tenant's claim the fact that the landlord may have served documents to the tenants using a process server on November 27, 2021 at the forwarding address. The tenant had to serve their forwarding address in writing, and in November 2021 they only provided it verbally.

Section 88 of the Act states:

> All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
> […]

> g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

I accept the tenants' testimony that they served their forwarding address in writing by attaching the form RTB 47 to the rental unit's front door on December 07, 2021.

The tenancy agreement clearly indicates that the landlord's address for service is the ki address. The tenants did not submit the text message indicating they sent a photo showing form RTB 47 to the landlord on December 07, 2021 and the landlord denied receiving this message.

Based on the tenancy agreement and the landlord's convincing testimony, I find the rental unit is not the landlord's address for service. Thus, I find the tenants did not serve their forwarding address in accordance with section 88(g) of the Act.

As the landlord confirmed receipt of form RTB 47 on December 23, 2021, I find the landlord was sufficiently served form RTB 47 on December 23, 2021, per section 71(2)(b) of the Act.

Thus, I find the landlord received the tenants' forwarding address in writing on December 23, 2021.

Based on the landlord's convincing testimony, I find the landlord mailed to the tenants the cheque in the amount of $984.50 on December 24, 2021. The landlord subtracted the amount of $65.50 for the bill.

The tenancy agreement indicates the landlord will retain the final utility charges from the security deposit. The direct request worksheet, signed by the tenant, indicates the tenant authorized the landlord to retain the amount of $65.50 from the security deposit.

Considering all the above, I find the landlord mailed the cheque containing the security deposit minus the authorized deduction of $65.50 before the 15-day deadline of section 38(1) of the Act.

Thus, I dismiss the tenants' claim without leave to reapply.

Pursuant to section 72 of the Act, as the tenants were not successful with their application, they must bear the cost of the filing fee.

Conclusion

I dismiss the tenants' application 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: October 12, 2022

Residential Tenancy Branch