



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT MNSD**

Introduction

This hearing was convened by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- an order to seek the return of all of the security deposit and/or pet deposit pursuant to section 38; and
- a monetary order for compensation from the Landlord for breach of the Act, the *Residential Tenancy Regulations* ("Regulations") and/or the tenancy agreement pursuant to section 57.

The Landlord and one of the two Tenants ("DC") attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* ("RoP") prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

DC stated the Tenants served the Notice of Dispute Resolution Proceeding ("NDRP") and their evidence (collectively the "NDRP Package") on the Landlord by registered mail on March 17, 2022. DC submitted into evidence a Canada Post receipt and tracking number to corroborate his testimony that the NDRP Package was served on the Landlord. The Landlord acknowledged receipt of the NDRP Package. I find the NDRP Package was served on the Landlord pursuant to the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Non-Service of Evidence on Tenants by Landlord

The Landlord stated she submitted her evidence to the Residential Tenancy Branch (“RTB”) but admitted she did not serve that evidence on the Tenants because she did not have an address for service for the Tenants. Rules 3.15 of the RoP states:

3.15 Respondent’s evidence provided in single package

Where possible, copies of all of the respondent’s available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent’s evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, *the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.*

See also Rules 3.7 and 3.10.

[emphasis in italics added]

I pointed out that the address for service for each of the Tenants was stated on page 2 of the Notice of Dispute Resolution Proceeding that she admitted receiving from the Tenants with the NDRP Package. The Landlord did not serve the Tenants with her evidence not less than seven days before the hearing as required by Rule 3.15. As such, the Landlord’s evidence submitted to the RTB is not admissible for the purposes of this hearing.

Issues to be Decided

Are the Tenants entitled to:

- the return of their security deposit?
- an order for compensation from the Landlord for breach of the Act, the Regulations and/or the tenancy agreement?

Background

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

DC submitted into evidence a copy of a signed tenancy agreement dated August 19, 2022 between the Tenants and the Landlord. The parties agreed the tenancy commenced on August 19, 2020, for a fixed term ending February 19, 2021 and then continued on a month-to-month basis. The tenancy agreement stated the rental unit was furnished with a television and all appliances. The Tenants were required to pay \$1,250.00 on the 1st day of each month and pay a security deposit ("Deposit") of \$625.00. The Landlord acknowledged the Tenants paid the Deposit and that she was still holding it. The parties agreed the Tenants vacated the rental unit on February 19, 2022.

The Landlord stated the Tenants did not give her a written notice to end the tenancy at least one month before they vacated the rental unit. The Landlord stated the parties had done a walk-through of the rental unit before the Tenants moved in but admitted that no written move-in or move-out condition inspection reports were completed. The Landlord claimed that there were damages to the rental unit or furnishing and that the rental unit was not clean when they vacated it. The Landlord admitted that she has not made an application for dispute resolution to make a claim for damages against the Deposit that she is holding on behalf of the Tenants.

DC stated he served the Landlord in-person with a written notice with a forwarding address of a relative for the return of the Deposit. DC stated the Landlord refused to accept service of the written notice because she wanted the home address of the Tenants. The Landlord denied the Tenants served her with a written notice of their forwarding address.

DC submitted into evidence a copy of a text message dated July 1, 2021 in which the Landlord stated “Here I am giving you info about rental fee changes in August. The Rent will be \$1400 starting August.”. DC submitted into evidence a copy of a written document that was signed by the Tenants and Landlord whereby the Tenants agreed the rent would be \$1,400 starting in August 2021. DC stated that the Tenants paid \$1,400.00 per month for six months commencing August 2021. DC submitted six confirmations that stated \$1,400.00 had been paid and stated the payments were made to the Landlord for each of the months of August 2021 through to January 2022 inclusive to corroborate his testimony. DC stated the Landlord did not serve them with a Notice of Rent Increase on Form RTB-11. The Landlord admitted she received \$1,400.00 for August 2021 through January 2022. The Landlord also admitted she did not serve the Tenants with a Notice of Rent Increase.

Analysis

1. Tenants’ Claim for Return of Security Deposit

Section 38(1) of the Act states:

- 38(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.

The parties agreed the Tenants vacated the rental unit on February 19, 2022. DC submitted into evidence a handwritten notice dated February 19, 2022 (“Forwarding Address Notice”) that provided a forwarding address for the Tenants. DC stated he served the Forwarding Address Notice on the Landlord in-person. DC stated the Landlord refused to accept the Forwarding Address Notice because it provided an

address for a relative of the Tenants and the Landlord insisted he provide the home address of the Tenants. The Landlord denied DC served her with the Forwarding Address Notice. DC admitted he did not have any witnesses or other evidence to corroborate he served the Forwarding Address Notice on the Landlord. I find, on a balance of probabilities, that the Landlord was not served with the Forwarding Address Notice. Based on the foregoing, I find the Landlord was not required to comply with the requirements of section 38(1) of the Act. As such, I find the Tenants are not entitled to the return of the Deposit. I dismiss the Tenants' claim for the return of the Deposit with leave to reapply.

The Tenants have the option of calling the Contact Centre of the RTB to obtain information on the methods by which they may serve the Forwarding Address Notice on the Landlord and, if the Landlord does not comply with the requirements of section 38(1), the appropriate time for the Tenants to make an application for dispute resolution to seek the return of the Deposit. *I note that, pursuant to section 39, if a tenant does not serve the landlord with a written notice with their forwarding address in writing within one year after the end of the tenancy, the right of the tenant to the return of the security deposit is extinguished and the landlord may keep the deposit.* I also note that, assuming that the tenant serves a written notice of their forwarding address on the landlord within 1 year of the end of the tenancy, the tenant must file an application for dispute resolution within 2 years of the date the tenancy ended. This decision does not extend any applicable deadlines set out in the Act.

2. Tenants' Claim for Compensation for Breach of Act, Regulations and/or Tenancy Agreement

DC stated the Landlord sent the Tenants a text in which she stated they were required to pay \$1,400.00 per month commencing August 2021. DC stated the Tenants paid the additional \$1,400.00 for six months commencing August 2021. DC stated the Landlord did not serve them with a Notice of Rent Increase on Form RTB-11. The Landlord admitted she did not serve the Tenants with a Notice of Rent Increase.

Section 41 of the Act states:

- 41(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:
- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) *A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*
- (3) *A notice of a rent increase must be in the approved form.*
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

[emphasis in italics added]

The provisions of section 41 of the Act are mandatory. Regardless of any other requirement of section 41, section 41(2) of the Act requires that the Landlord must give the Tenants a notice of a rent increase at least 3 months before the effective date of the increase. Section 41(3) states the notice of rent increase notice must be in the approved form. The approved form is Form RTB-11. The Landlord admitted she did not serve the Tenants with a notice of rent increase on Form RTB-11. Although the Tenants agreed to a rent increase to \$1,400.00 per month, the Landlord failed to comply with the requirements of sections 41(2) and 41(3) of the Act requiring service of a completed Form RTB-11 on the Tenants at least three months prior to the effective date of the Notice of Rent Increase. As such, the rent increase made by the Landlord is ineffective. The parties agreed the Tenants paid an additional \$150.00 per month for six months, being a total of \$900.00 above the rent the Tenants were otherwise required to pay pursuant to the terms of the tenancy agreement. I find the Landlord must compensate the Tenants for the \$900.00 the Landlord collected pursuant to a rent increase that did not comply with the provisions of section 41 of the Act. I order that the Landlord to pay the Tenants \$900.00 for the rent she collected that she was not entitled to.

Conclusion

Pursuant to section 67 of the Act, I order that the Landlord pay the Tenants \$900.00 for overpayment of rent. The Tenants must serve this decision and attached order on the Landlord as soon as possible after receiving a copy of it from the RTB.

The Tenants' claim for the return of the security deposit is dismissed with 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 9 2022

Residential Tenancy Branch