Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR FFT**

Introduction

This hearing was reconvened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an order for the return of the Tenants' security and pet damage deposits pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord's agent ("LP"), one of the two Tenants ("LM") and the Tenants' legal counsel ("HF") attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated April 4, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Tenants. As a result, this hearing was scheduled and came on for hearing on October 24, 2022, to consider the Application. Notices of the reconvened hearing, and a copy of the Interim Decision, were served on the parties by the Residential Tenancy Branch ("RTB"), in accordance with section 89 of the Act.

HF stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence (collectively the "NDRP Package") for the original hearing on the Landlord by registered mail on March 15, 2022. HF provided the the Canada Post tracking number for

service of the NDRP Package on the Landlord to corroborate her testimony. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

LP stated the Landlord did not serve any evidence on the Tenants.

Preliminary Matter – Authority of LP to act on Behalf of Landlord

At the outset of the hearing, I asked LP if the Landlord would be attending the hearing. LP stated the Landlord would not be attending because of her anxiety. When I asked, LP stated that, although the Landlord had not submitted an authorization to the RTB for him to act on the Landlord's behalf, he acted on the Landlord's behalf in connection with an earlier dispute resolution hearing before an arbitrator of the RTB. HF stated LP was the representative of the Landlord she has been dealing with in the Application, confirmed LP was the representative of the Landlord in a previous dispute resolution proceeding and the Tenants had no objection to LP acting on behalf of the Landlord at this hearing. As such, I accept the authority of LP to act as the Landlord's representative for these proceedings.

Issues to be Decided

Are the Tenants entitled to:

- a monetary order of $1,500.00, representing the return of double the security and pet damage deposits?
- recover the filing fee of the Application from the Landlord?

Background and Evidence

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.

The Tenants submitted into evidence a copy of a tenancy agreement and an addendum dated November 5, 2020 ("Tenancy Agreement") between the Landlord and the Tenants. The Tenancy Agreement states the tenancy commenced on December 1, 2022, on a month-to-month basis, with rent of $750.00 payable on the 31st day of each month. The Tenants were required to pay all of the utilities for the rental unit. The Tenants were required to pay the Landlord a security deposit of $375.00 and a pet

damage deposit of $375.00. The parties agreed the Tenants vacated the rental unit on November 30, 2021. LP acknowledged the Landlord received the security and pet damage deposits and that she was holding them in trust on behalf of the Tenants. I find there was a tenancy between the Landlord and Tenants and that I have jurisdiction to hear the Application.

LM submitted a signed copy of a move-out condition inspection report dated January 12, 2019 and she stated the move-in condition inspection was completed. HF stated a move-out condition inspection was performed with the Landlord's mother but the move-out condition inspection report was never completed notwithstanding the Tenants requested that it be completed. HF stated the Landlord's mother did not allow the Tenants to insert their forwarding address on the move-out condition inspection report because she stated it was unnecessary. HF stated the Tenants gave the Landlord's mother an envelope that had their forwarding address. HF submitted into evidence a video that showed the Tenants attempting to give a person, who was identified as the Landlord's mother, an envelope. In the video, one person can be seen passing an envelope to another person and the person passing the envelope can be heard saying "that's the forwarding address for…". The Tenants submitted a signed and witnessed Proof of Service on Form RTB-41 certifying that a written notice of the Tenant's forwarding address was served on the Landlord's mother. LM stated the witness on the Form RTB-41 was her own mother who was present during the move-out condition inspection. HF admitted the Tenants did not have a copy of the written notice of their forwarding address that was served on the Landlord's mother. LM stated the address provided in the envelope was HF's address. LM stated the Tenants were not provided with a copy of the condition move-out inspection report.

LP stated the address provided was for HF and not the home address of the Tenants and it did not provide a phone number for the Tenants. HF stated she sent an email dated December 19, 2021 to LP in which she inquired about the return of the Tenants' security and pet damage deposits and provided her address as the forwarding address for the Tenants. HF stated LP then responded by email on December 19, 2021 to inquire how the $1,500.00 requested by the Tenants was calculated. HF stated that she responded to another email inquiry from LP and stated she sent another email dated January 11, 2022 with her address for the return of the security and pet damage deposits. HP submitted copies of those emails into evidence to corroborate her testimony.

LP did not provide any evidence the Landlord made any application for dispute resolution to make a claim against the security deposit nor did he provide any evidence the Landlord had returned the security and pet damage deposits to the Tenants or HF.

Analysis

Sections 24(1), 36(1), 38(1) and 39 of the Act state:

24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

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 withthe regulations;

(d) make an application for dispute resolution claiming against the securitydeposit or pet damage deposit.

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The parties agreed a move-out condition inspection was performed on the rental unit on November 30, 2021, being the date that the Tenants vacated the rental unit. HF stated the Landlord's agent would not allow the Tenants to insert their forwarding address on the move-out condition inspection report. LM stated the Tenants provided the Landlord's agent with a written notice with their forwarding address which can be seen in the video recording submitted into evidence by the Tenants. However, HF admitted the Tenants did not have a copy of the written notice served on the Landlord's agent. LP stated the Landlord required the Tenants provide their own home address and I inferred from LP's testimony that the Landlord did receive the written notice of the Tenants forwarding address at the time of the move-out condition inspection. As such, I find the Landlord's agent was served in-person with the Tenants' forwarding address on November 30, 2021. As such, the Landlord had 15 days, or until December 15, 2021, to either return the security and pet damage deposits to the Tenants in full or make an application for dispute resolution to make a claim against the deposits for damages and/or unpaid rent after the Landlord's agent was served in-person with the written notice of the Tenant's forwarding address.

HF stated she sent an email dated December 19, 2021 to LP in which he inquired about the return of the Tenants' security and pet damage deposits and provided her address as the forwarding address for the Tenants. HF stated LP then responded by email on December 19, 2021, to inquire how the $1,500.00 the Tenants were seeking from the Landlord was calculated. HF submitted into evidence copies of the emails between her and LP to corroborate her testimony. Although the parties did not submit any evidence that they had agreed to be served with documents and communications by email, I find that LP received HF email with her address for service as LP replied to HF's email. As such, pursuant to section 71(2)(b) of the Act, I find that the Tenants' forwarding address and address for service was sufficiently served on the

Landlord and was deemed to have been received by LP on December 22, 2021, being 3 days after HF sent the email with the Tenant's forwarding address. Pursuant to section 38(1) of the Act, the Landlord had had 15 days, or until January 6, 2022, to either return the security and pet damage deposits to the Tenants in full or make an application for dispute resolution to make a claim against the deposits for damages or unpaid rent after deemed receipt of the email dated December 19, 2022.

LP argued that the Tenants did not provide their home address to the Landlord and, as a result, she was not required to return the security deposit or make an application for dispute resolution. Nowhere in section 38(1) of the Act, or anywhere else in the Act for that matter, is there a requirement that a Tenant must provide their new home address in order to trigger the provisions of section 38(1) of the Act. A tenant has the option of providing any address that the Landlord may use to return a deposit or use as an address for service for the purposes of an application for dispute resolution. The address provided by a tenant may be a post office box number and address, the address of a parent or that of a friend. As such, I find the Landlord did not have any excuse for not returning the Tenants' deposits or making an application to claim against the deposits for unpaid rent or damages within 15 days of deemed receipt of the Tenant's written notice of their forwarding address.

Regardless of whether I consider the Landlord to have been required to return the security deposit, or make an application for dispute resolution, by either December 15, 2021 or January 6, 2022, there is no evidence before me that the Landlord ever made an application for dispute resolution to make a claim against the deposit for damages or for unpaid rent or, alternatively, returned the security deposit to the Tenants. Based on the foregoing, I find the Landlord has not complied with the requirements of section 38(1) of the Act.

As the Tenants attended both the move-in and move-out condition inspections, I find their right to the return of their security and pet damage deposits has not been extinguished by either sections 24(1) or 36(1) of the Act. As the Tenants and HF served written notices of the Tenants' forwarding address on the Landlord within one year the tenancy ending on November 30, 2021, I find their right to the return of their security and pet damage deposits has not been extinguished by section 39 of the Act.

Section 38(6) of the Act states:

> 38(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 in italics added]

As the language of section 38(6) is mandatory, I am required to order the Landlord pay the Tenants an amount equal to double the amount of the security and pet damage deposits. As such, I order the Landlord to pay the Tenants an amount that is double the amount of the security deposit of $375.00 and pet damage deposit of $375.00, being being a total of $1,500.00.

As the Tenants have been successful in the Application, they may recover the $100.00 filing fee from the Landlord pursuant to section 72(1) of the Act.

Conclusion

Pursuant to sections 38.1 and 72 of the Act, I order that the Landlord pay the Tenants $1,600.00 calculated as follows:

Description	Amount
Return of double the Security Deposit of $375.00 and Pet Damage Deposit of $375.00 (2 x ($375.00 + $375.00))	$1,500.00
Recovery of Filing Fee of Application	$100.00
Total	**$1,600.00**

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.

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: November 3, 2022

Residential Tenancy Branch