



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- return of the Tenants' security deposit and/or pet damage deposit in the amount of \$15,000.00 pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Landlord was represented by legal advocate MS during the hearing.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Removal of Party

This application initially included LJ as a third tenant and application. It is not disputed that LJ did not sign the tenancy agreement but had resided in the rental unit as an occupant. As discussed during the hearing and by consent of the parties, I have removed LJ as a party to this application.

Preliminary Matter – Service of Dispute Resolution Documents

MS confirmed receipt of the Tenants' notice of dispute resolution proceeding package (the "NDRP Package"). I find the Landlord was served with the NDRP Package in

accordance with section 89 of the Act. MS stated that the Landlord did not receive any evidence from the Tenants. The Tenants acknowledged that they did not serve the Landlord with their evidence. Under Rule 3.14 of the Rules of Procedure, documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. As the Tenants' documentary evidence was not served on the Landlord, I find it would be procedurally unfair to consider such evidence and I do not include it for the purpose of this proceeding.

The Tenants confirmed receipt of the Landlord's documentary evidence. I find the Tenants were served with the Landlord's documentary evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Are the Tenants entitled to the return of their security deposit and pet damage deposit?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

This tenancy commenced on December 3, 2021 and ended on April 30, 2022. Rent was \$7,500.00 per month. The Tenants paid a security deposit of \$3,750.00 and a pet damage deposit of \$3,750.00.

The Tenants attended a move-in inspection with a representative of the Landlord on December 3, 2021. According to the Tenants, they signed a move-in condition inspection report but it was not signed by anyone on behalf of the Landlord. The Landlord did not recall if the report had been signed.

MS submitted that a representative of the Landlord attended a move-out inspection on April 30, 2022 and May 1, 2022 on the Landlord's behalf, but the Tenants did not participate. MS submitted that one of the Tenants was present but did not do the inspection. MS argued that the Tenants were given two opportunities for a move-out inspection via text and in person.

According to a handwritten note submitted by the Landlord, the Landlord returned \$4,800.00 cash to the Tenants on April 30, 2022. The Tenants agreed that they received this amount from the Landlord.

The Tenants stated that they gave their forwarding address to the Landlord via text message and email on May 16 or 17, 2022. The Tenants stated that their forwarding address was also included in the hearing package sent to the Landlord via registered mail on June 1, 2022. The Tenants argued that the Landlord had their address because they were able to receive evidence from the Landlord.

MS denied that the Landlord had received a written forwarding address. MS argued that text is not an acceptable method of service under the Act. MS argued that the Tenants' service address for the dispute was for serving documents and did not constitute a forwarding address.

MS confirmed the Landlord made an application to retain the deposits in January 2023 with a date set for a future hearing (file number referenced on the cover page of this decision).

The Tenants stated that they had left the rental unit immaculate. The Tenants stated that there was pre-existing damage from previous tenants. The Tenants stated that the Landlord allowed a contractor into the rental unit when the Tenants were out, without notice, and the person was arrested. The Tenants stated that the Landlord drained the hot tub for two weeks, so the Tenants were left without access. The Tenants stated that they were being harassed about garbage.

The Tenants stated that there were no walkthroughs and nothing was signed. The Tenants stated everything seemed fine, but they were told afterwards that they owed the Landlord money.

The Tenants confirmed that they are reducing their claim from \$15,000.00 to \$10,200.00. The Tenants stated that because the Landlord did not return their deposits in full, they felt they were entitled to "one more month of deposits". The Tenants stated that they disagreed that they would not get their deposits back.

MS argued that the Tenants made submissions which are not relevant to the present application, including allegations regarding the contractor, the hot tub, and harassment. MS referred to photographs submitted by the Landlord showing the state of the rental unit after the Tenants moved out. MS emphasized that no forwarding address was provided to the Landlord in writing.

Analysis

1. Are the Tenants entitled to the return of their security deposit and pet damage deposit?

Based on the evidence presented, I find the Tenants are seeking double their security and pet damage deposits less the amount already returned by the Landlord, or $2 \times (\$3,750.00 + \$3,750.00) - \$4,800.00 = \$10,200.00$.

I note the Tenants alleged that there were other breaches during the tenancy, and indicated that they suffered “emotional stress, financial hardship, and loss of work” on their application. However, I agree with the Landlord that these issues are not relevant for the purposes of determining the return of the Tenants’ deposits under the Act.

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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.

Section 38(6) of the Act states that if a landlord does not comply with section 38(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.

In this case, I find it is not disputed that the tenancy ended on April 30, 2022.

The Tenants argued that the Landlord received their forwarding address in writing through their application sent via registered mail. However, the Residential Tenancy

Branch Practice Directive “Forwarding Address for the Return of a Tenant’s Security Deposit” dated September 21, 2015 (the “Practice Directive”) states:

A forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits.

Arbitrators are directed to not make an order for return of the Deposits (whether in the original amount or doubled as per paragraph 38(6)(b) of the Act), based on the date the Application was served or filed by the Tenant.

Based on the above, I find the Landlord cannot be deemed to have been served with the Tenants’ forwarding address in writing in June 2022, due to having received the address stated on the Tenants’ application alone. I find it does not matter that the Landlord made an application in January 2023, since the Tenants’ application did not meet the requirement of a separate written notice for a forwarding address.

I find the Tenants provided a few other dates for when the Landlord is said to have received their forwarding address in writing. I note the Tenants’ application states that the forwarding address was given to the Landlord on April 30, 2022 and the method was “other”. I find the Tenants referred to a text message and email sent to the Landlord on May 16 or 17, 2022.

However, I note that text messaging is not an acceptable method of service under the Act. Furthermore, I find there is no evidence to suggest that the Landlord had provided an email address for service under section 43 of the regulations, such that email service would have been acceptable under the Act.

Section 88 of the Act states:

How to give or serve documents generally

88 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:

- (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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (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;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

Based on the evidence presented, I am unable to conclude that the Landlord was sufficiently served with the Tenants' forwarding address in writing prior to receiving the Tenants' application for dispute resolution in June 2022.

Since the Landlord now has knowledge of the Tenants' forwarding address, which I accept is the Tenants' service address stated on this application, I order that the Landlord is sufficiently served with the Tenants' forwarding address in writing effective the date of this decision, or **February 28, 2022**, pursuant to section 71(2)(b) of the Act.

I find the deadline for the Landlord's obligations under section 38(1) of the Act is therefore 15 days from the date of this decision, or **March 15, 2023**.

Under the Practice Directive, a tenant could re-apply for double the deposits if the landlord does not claim against or return the deposits within 15 days of the effective service date ordered by the arbitrator.

Therefore, I dismiss the Tenants' claim for the return of the security and pet damage deposits with leave to re-apply.

2. Are the Tenants entitled to reimbursement of the filing fee?

The Tenants have not been successful in this application. I decline to award reimbursement of the Tenants' filing fee under section 72(1) of the Act.

Conclusion

The Tenants' claim for return of the security deposit and pet damage deposit is dismissed with leave to re-apply. The Landlord is deemed to have received the Tenants' forwarding address on **February 28, 2023**, the date of this decision. Leave to re-apply does not extend any statutory time limits.

The Tenants' claim for reimbursement of the filing fee is dismissed without leave to re-apply.

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: February 28, 2023

Residential Tenancy Branch