Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSD FFT**

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 the security deposit and/or pet deposit pursuant to section 38; and

- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord and one of the two Tenants ("CX") 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.

CX stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence (collectively the "NDRP Package") on the Landlord by registered mail on July 14, 2022. CX submitted into evidence a copy of the Canada Post receipt with the tracking code to corroborate her evidence. The Landlord acknowledged receipt of the NDRP Package. As such, I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Non-Service of Landlord's Evidence on Tenants

The Landlord stated she submitted her evidence to the Residential Tenancy Branch on March 13, 2023 but acknowledged she did not serve it on the Tenants. Rule 3.14 of the RoP states:

> **3.15 Respondent's evidence provided in single package**
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> 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.
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> 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 an additional rent increase for capital expenditures application (see Rule 11), 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.
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> See also Rules 3.7 and 3.10.

The Landlord did not serve the Tenants with her evidence. As such, she did not comply with Rule 3.15. Based on the foregoing, the Landlord's evidence is not admissible for these proceedings. I advised the Landlord that she had the option of giving oral testimony, or call witnesses to provided oral testimony, on the contents of the Landlord's evidence.

Issues to be Decided

Are the Tenants entitled to:

- recover all or part of their security deposit?
- recover the filing fee for 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.

CX submitted into evidence a copy of a tenancy agreement dated December 19, 2021 between the Landlord and Tenants. The tenancy agreement states the tenancy commenced on January 1, 2022, for a fixed term ending June 30, 2022, with rent of $2,200.00 payable on the1st day of each month. The Tenants were required to pay a security deposit of $1,100.00. The Landlord acknowledged the Tenants paid the security deposit. The parties agreed the Tenants gave the Landlord written notice to end the tenancy and the Tenants vacated the rental unit on May 31, 2022.

CX stated the Tenants sent a text to the Landlord in which they provided the Landlord with their email address and requested the Landlord to return their security deposit to that email address. When I asked, CX admitted the Tenants did not serve the Landlord with a written notice that provided their forwarding address.

Analysis

1. Tenants' Claim for Return of Security Deposit

Sections 38(1), 38.1(1) and 39 of the Act state:

> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (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.

38.1(1) A tenant, by making an application under Part 5 *[Resolving Disputes]* for dispute resolution, may request an order for the return of an amount that is double the portion of the security deposit or pet damage deposit or both to which all of the following apply:

(a) the landlord has not applied to the director within the time set out in section 38 (1) claiming against that portion;

(b) there is no order referred to in section 38 (3) or (4) (b) applicable to that portion;

(c) there is no agreement under section 38 (4) (a) applicable to that portion.

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.

CX stated the Tenants sent a text to the Landlord in which they provided the Landlord with their email address and requested the Landlord to return their security deposit to that email address. CX admitted the Tenants did not serve the Landlord with a written notice that provided their forwarding address. As the Tenants only provided their email address and not their forwarding address, I find the Landlord was not required to comply with the requirements of section 38(1) of the Act. Based on the foregoing, I find the Tenants are not entitled to an order for the return of the security 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) within 15 days of receipt of the notice, then they have the option of making an application for dispute resolution to seek the return of the security deposit pursuant to section 38.1(1) of the Act. *As stated in section 39 of the Act, 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.

As the Tenants were not successful in their claim, they are not entitled to recover the filing fee for the Application.

Conclusion

The Application 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: April 11, 2023

Residential Tenancy Branch