



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT**

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution by direct request, made on August 24, 2022 (the "Application") and adjourned to a participatory hearing. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Tenant A.B. and the Landlord P.C. attended the hearing at the appointed date and time. At the beginning of the hearing, the Landlord acknowledged receipt of the application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on April 15, 2021. During the tenancy, the Tenants were required to pay rent in the amount of \$3,000.00 to the Landlords each month. The Tenants paid a security deposit in the amount of \$1,500.00 and a pet damage deposit in the amount of \$1,500.00, both of which the Landlords continue to hold. The tenancy ended on August 1, 2022.

The Tenants are claiming for the return of their deposits totalling \$3,000.00. The parties agreed that the Tenants emailed the Landlords on August 3, 2022. The Tenant stated that they attached a document in the email which contained the Tenants' forwarding address, along with the request for the Landlords to return the security and pet damage deposits. The Tenant stated that the Landlords have not yet returned any amounts. The Tenant stated that they did not consent to the Landlords retaining any portions of the deposits.

The Landlord stated that they received the Tenants' email on August 3, 2022, however, did not open the attachment containing the Tenant's forwarding address as they did not expect tenancy related documents to be sent in this fashion. The Tenant stated that the Landlord had once provided the Tenants with their email, however, the Landlord stated that most of the communications were done over text message. The Landlord stated that they felt entitled to keeping the Tenants' deposits as the Tenants left the rental unit dirty and damaged. The Tenant stated that rental unit was in good condition and clean at the end of the tenancy.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

Section 88 of the *Act* allows for documents, other than those referred to in section 89, 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.

Other means of giving or serving documents

43 (1) For the purposes of section 88 (j) [*how to give or serve documents generally*] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

According to the Residential Tenancy Policy Guideline 12;

At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. A person who does not regularly check their email should not provide an email address to the other party for service purposes.

A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party.

If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method. If no other method of service is successful, a party may apply for a substituted service order (RTB-13 - Application for Substituted Service), asking for an order allowing service by email, and provide evidence of a history of communication between the parties at that email address. Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.

In this case, the Tenant served their forwarding address to the Landlord by attaching it to an email. While the Landlord confirmed having received the email on August 3, 2022, they did not open the attachment. I accept that the Landlord provided the Tenant with their email during the tenancy, however, I find that the Landlord did not explicitly state that their email was an appropriate form of service for tenancy related documents. I find that the Tenants were not permitted to serve the Landlord their forwarding address by email.

In light of the above, I find that the Tenants did not adequately serve the Landlord with their forwarding address in writing in accordance with Section 38(1) of the *Act*. Therefore, I dismiss the Tenants' Application with leave to reapply. The Tenants are required to provide the Landlord with their forwarding address in writing. It is suggested that this be done by Canada Post registered mail.

Section 39 of the *Act* establishes that it is the Tenants obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does

not occur, the Landlord may keep the Deposit and the Tenants' right to the Deposit is extinguished.

As the Tenants were not successful with their Application, I also dismiss the Tenants' Application for the return of the filing fee.

During the hearing, the Landlord stated that he felt entitled to retaining the Tenants' security deposit for the loss of rent he incurred. The Landlord is required to repay the deposit or make a claim against it by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing. If the Landlord does neither, the Tenants are at liberty to reapply for double the amount of their security deposit.

Conclusion

The Tenants provided insufficient evidence to demonstrate that they served their forwarding address to the Landlord in writing or served in accordance with Section 88 of the Act. The Tenants' Application for the return of their security 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: June 27, 2023

Residential Tenancy Branch