Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, LRSD, FFL / MNSDS-DR, FFT

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlord seeks the following:

- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act;
- Authorization to retain all or a portion of the Tenant's security deposit under section 38 of the Act; and
- To recover cost of the filing fee for their Application from the Tenant under section 72 of the Act.

The Tenant seeks the following:

- An order for the Landlord to return their security deposit under section 38 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72 of the Act.

Service of the Notice of Dispute Resolution Proceeding

The Landlord testified they served the Notice of Dispute Resolution Proceeding for their Application (the Materials) to the Tenant via registered mail. Per the Landlord, the address used for service was the rental unit as the Tenant did not provide a forwarding address to them after the tenancy ended. The Landlord testified their assistant also sent the Materials to the Tenant via email and text message.

The Tenant testified they did not receive the Materials by any of the methods outlined by the Landlord. The Tenant stated they only received notice from the Residential Tenancy Branch that the Landlord had withdrawn a previous application against them. The Tenant initially testified they had never provided their forwarding address in writing to the Landlord as they did not want them to know their whereabouts.

The Tenant testified they served the Materials for their Application to the Landlord and their assistant via email. The parties do not have an agreement to serve one another using this method. A record of the email sent to the Landlord with the Materials attached was provided as evidence by the Tenant, though there was no evidence of receipt. The Landlord testified they did not recall receiving the Tenant's Materials.

After the above was discussed, the Tenant then testified they had informed the Landlord they could be served at their PO Box address, though the Landlord denied this. The Tenant did not provide any evidence to corroborate their position on this issue.

Analysis

Section 89 of the Act sets out the methods a party may serve another with the application materials, which are:

- By leaving a copy with the person;
- If the person is a landlord, by leaving a copy with an agent of the landlord;
- By sending a copy by 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;
- If the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant; and
- By any other means of service provided for in the Regulation.

Section 43 of the Regulation states a party may serve the application materials to another using an email address provided as an address for service by the person.

Based on the evidence before me, I find neither party served their Materials in accordance with the Act.

The Landlord's testimony was consistent and clear on the issue of the Tenant's forwarding address. The Tenant initially testified they had not provided their forwarding address, then indicated they referred the Landlord to a PO Box for service, though

provided no supporting evidence. In these circumstances, I find the Tenant did not provide their forwarding address in writing to the Landlord.

Given this, the Landlord has no forwarding address to serve the Tenant. Whilst under section 71 of the Act an arbitrator may order a record not served in accordance with Acy, was served in accordance with section 89 of the Act, I find no evidence to indicate the Tenant could be served at the rental unit after they vacated, which is where the Landlord served their materials. As such, I make no order under section 71 of the Act.

In the case of the Tenant's Materials, it was undisputed the parties did not have an agreement to serve one another via email. There was no supporting evidence the Tenant's Materials were received by the Landlord, who disputed this notion. Given this, I am not inclined to make an order under section 71 of the Act that the Tenant's Materials were served in accordance with section 89 of the Act.

As explained during the hearing, procedural fairness requires that a party be notified of a claim against them to allow them an opportunity to respond. Given I find that neither party was served with the Materials for the other's Application it would be procedurally unfair for me to decide on the merits of either. I therefore dismiss both Applications with leave to reapply. Leave to reapply is not an extension of timeline to apply. Both parties must bear the cost of the filing fee for their respective Applications.

Neither party wished to discuss or clarify the issue of their respective addresses for service.

Parties were reminded of section 39 of the Act which states that if a tenant does not give a landlord a forwarding address in writing within one year after the tenancy ends, the landlord may keep the security deposit and the tenant's right to the return of the deposit is extinguished.

Conclusion

Both Applications are 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 Act.

Dated: November 19, 2024