Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants testified that the landlord was served the notice of dispute resolution package at his home and business addresses by registered mail on July 27, 2018. The landlord's business address is a carpet store. The tenants provided the Canada Post tracking numbers to confirm these registered mailings. The tenants testified that the notice of dispute resolution package was also hand delivered to the landlord's place of business on July 28, 2018.

Section 89 of the *Act* states that an application for dispute resolution, when required to be given to one party by another, may be given 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. The tenants entered into evidence a

text message from the landlord asking them to meet him at the carpet store. I find that the text message entered into evidence does not prove, on a balance of probabilities, that the landlord carries on business as a landlord at the carpet store.

I find that the notice of dispute resolution packages sent the landlord's place of business, a carpet store, were not served in accordance with section 89 of *Act*.

I find that the landlord was deemed served with the notice of dispute resolution package at his home address on August 1, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act.*

Amendments

The tenants filed a claim for a Monetary Order for damage and compensation under the *Act*, in part, for the return of their security deposit. The Notice of hearing clearly states the tenants' intention to claim for the return of their security deposit. Pursuant to section 64 of the *Act*, I amend the tenants application to include a claim for the return of their security deposit.

The tenancy agreement entered into evidence lists landlord A.M. as the only landlord. None of the evidence provided by the tenants proves, on a balance of probabilities, that landlord D.C. is a landlord. Therefore, pursuant to section 64 of the *Act*, I amend the tenants' application to remove landlord D.C. from the application.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order for the return of their security deposit, pursuant to section 38 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenants, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenants provided undisputed testimony that this tenancy began on February 15, 2017 and ended on March 20, 2017. Monthly rent in the amount of $1,350.00 was payable on the first day of each month. A security deposit of $675.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenants testified that a few weeks after moving into the subject rental property the landlord sold the subject rental property and asked the tenants to move out. The tenants agreed, and on March 10, 2017 the parties signed a Mutual Agreement to End Tenancy effective April 30, 2017 with the following terms:

- "On or before the effective date of this Agreement, the landlord must pay the tenant an amount equal to two month's rent in cash or certified cheque.
- A tenant can give 10 days written notice and move out early (rent prorated by day)
- If stay April rent as per rental agreement."

The tenants testified that on March 10, 2017 the tenants provided the landlord with 10 Days' Notice to end the tenancy on March 20, 2017, via text message. The text message was entered into evidence. On March 10, 2017 the landlord responded to the tenant's texted 10 Day notice, stating: "That is fine". The tenants testified that they paid all of March 2017's rent in the amount of $1,350.00 prior to signing the Mutual Agreement to End Tenancy.

The tenants testified that they provided the landlord with their forwarding address via text message on March 21, 2017. The landlord responded to the tenants on April 6, 2018. The text messages were entered into evidence.

The tenants testified that on April 7, 2018 they left a letter to the landlord in the landlord's mailbox which:

- Provided the landlord with the tenants forwarding address in writing and requested the return of the security deposit in the amount of $675.00; and

- Stated that since the tenant already paid rent for the entire month of March, that the landlord is required to refund the tenants $479.05 for March 21- 31, 2017 as per the Mutual Agreement to End Tenancy.

The tenants testified that the landlord did provide them with two months' rent but that he did not return their security deposit or their pro-rated rent for March 2017.

The tenants submitted that they applied to have this dispute determined by the Residential Tenancy branch on two previous occasions and that their applications were dismissed with leave to reapply as they did not serve the landlord in accordance with the *Act*. The tenants are seeking to recover the filing fee for this application and the two previous applications.

The tenants are seeking the following:

Item	**Amount**
Doubled security deposit	$1,350.00
Pro-rated rent refund March 17, 2017	$479.05
Three application fees	$300.00
Total	**$2,129.05**

Analysis

Security Deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenants. The tenancy ended on March 20, 2017. The tenants provided the landlord with their forwarding address via text message on March 21, 2017, the landlord responded to that text on April 6, 2017. While this does not conform with the service requirements set out in section 88 of the *Act*, I find the forwarding address was sufficiently served pursuant to section 71(2) of the *Act* on April 6, 2017 because the landlord responded to the tenants' text about the security deposit on April 6, 2017. The landlord did not return the security deposit or make an application for dispute resolution to claim against it.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17*,* I find that the tenants are entitled to receive $1,350.00, which is double the security deposit.

I find that the tenants provided 10 days notice of their intention to vacate the subject rental property prior to the effective date on the Mutual Agreement to End Tenancy on March 10, 2017 via text message. While text messaging does not meet the service requirements under section 88 of the *Act,* I find the 10 day notice was sufficiently served pursuant to section 71(2) of the *Act* on March 10, 2017 because the landlord responded to the tenants' text about the 10 day notice on March 10, 2017 and stated: "That is fine".

Pursuant to the Mutual Agreement to End Tenancy, I find that the landlord was required to reimburse the tenant for rent paid from March 21- 31, 2017 (11 days) based on the following calculation:

> $1,350.00 (rent) / 31 (days in March 2017) = $43.55 (daily rate)
> 11 (days in March the tenants did not reside at the property) * $43.55 (daily rate) = **$479.05**

As the tenants were wholly successful in this application, I find that they are entitled to recover the $100.00 filing fee from the landlord pursuant to section 72 of the *Act*. I find that the tenants are not entitled to recover the filing fees from their previous two attempts to have their claims heard as the landlord is not responsible for the tenants' failure to serve the landlord in accordance with the *Act*.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Doubled security deposit	$1,350.00
Pro-rated March 2017 rent	$479.05
Filing Fee	$100.00
TOTAL	**$1,929.05**

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 27, 2018

Residential Tenancy Branch