



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

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

- a monetary order for damages pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. The landlord's sister represented the landlord in this hearing.

Issues

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain all or a portion of the security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy ended on October 15, 2018. The tenants paid a security deposit of \$750.00 and a pet deposit of \$750.00 at the start of the tenancy which the landlord continues to hold. A forwarding address was provided by the tenants to the landlord at the end of the tenancy.

The landlord's application was filed on October 18, 2018. The landlord is claiming \$550.00 as compensation for damages to the rental unit.

The tenants acknowledged receiving the landlord's application on October 25, 2018 but argued that the landlord did not serve the application in accordance with the Act. The

tenants submit that the application was slid under their garage door when they were both not home.

The landlord acknowledged sliding the application under the garage door but argued that the tenants authorized her to slide it under the door. The landlord further argued that this is an approved method of service under the Act.

The tenants denied authorizing this method of service and submit that they advised the landlord that they would not be home at the time the landlord attempted service.

The landlord also uploaded evidence which consists of receipts of the proof of loss claimed by the landlord one day before this hearing date. The landlord testified that she just obtained the receipts even though the tenancy ended October 15, 2018. The landlord further submitted that she just realized the hearing was today.

This late evidence was not served on the tenants. The tenants submit they have no knowledge of the individual amounts claimed by the landlord nor did they provide any written authorization to the landlord to retain any specific amounts from their deposit.

Analysis

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

I find the landlord's application was not served to the tenants by registered mail to either an address at which the tenant resides or a forwarding address provided by the tenant or in person as required by section 89(1) of the *Act*.

Further, as per Rule 3 of the Residential Tenancy Branch (the Branch) Rules of Procedure, a party submitting evidence must ensure the following:

- Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

The landlord did not submit any receipts in support of the losses claimed until the day before the hearing to the Branch and failed to provide a copy to the tenants.

I find the landlord had no valid grounds for not providing all of her evidence in accordance with the above rule. Even if I had accepted that the tenants were sufficiently served with the landlord's application, which I do not, the landlord's failure to provide the above evidence to the tenants would have been fatal to the landlord's claim as I would not have accepted this late evidence.

Section 38 of the *Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Although the landlord made an application to retain the deposit within 15 days, the landlord failed to properly serve the application and submit critical evidence in support of the application in a timely manner. As such, the landlord's application is dismissed in its entirety without leave to reapply.

I find the landlord's application to be an abuse of the dispute resolution process. The landlord withheld both the tenants' security deposit and pet deposit totaling \$1500.00 for potential claim of only \$550.00. As per Residential Tenancy Policy Guideline #17, the doubling provisions of section 38 therefore apply.

I order the landlord to return the tenants security and pet deposit forthwith and award an amount of \$3000.00, which is double the original security and pet deposit of \$1500.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$3000.00. 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: February 14, 2019

Residential Tenancy Branch