Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

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

- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing and the tenants SC and VS attended the hearing. Co-tenant, SC spoke on behalf of the tenants. As both parties were present, service of documents was confirmed. The landlord acknowledges service of some, but not all of the tenant's Application for Dispute Resolution, saying it was missing pages. The tenant testified he served the full Application for Dispute Resolution, including the missing pages on September 2, 2020 by registered mail and provided the tracking number for the mailing. The tracking number is noted on the cover page of this decision. I find the tenant served the Application for Dispute Resolution five days after it was sent by registered mail, on September 7, 2020 in accordance with sections 89 and 90 of the Act.

The landlord testified he served the tenants with his evidence by email and courier, however the landlord was unable to provide a date of service since the arrangements for service was done by his agent. The agent was not called to provide testimony regarding service of evidence. The landlord testified he sent his evidence by email because he is in Hong Kong and the post office is closed in Hong Kong due to the coronavirus pandemic. The landlord acknowledges he did not have any prior order

allowing him to serve by email or courier prior to serving his evidence. Despite this, the tenant acknowledges he got various pieces of evidence from the landlord, however the evidence was disorganized, lacking in page numbers and a coherent index to follow. He was unable to advise me how many pages he received because the pages were not marked; he would have to count them to advise. I found the landlord has not served his evidence to the tenant in accordance with section 88 of the Act and for this reason, the landlord's documentary evidence was excluded for consideration during the hearing.

Preliminary Issue

A fourth person appeared as an applicant on the tenants' Application for Dispute Resolution, however she was not a signatory to the original tenancy agreement with the landlord. She became a roommate of the original tenants after the commencement of the tenancy. As such, I determined this person was an occupant and not a tenant as defined by the *Residential Tenancy Act*. Occupants do not enjoy the same right to commence applications for dispute resolutions against landlords under the Act and I dismissed this person's participation as a party and removed her name from the party names on the cover page of this decision. Only the tenants who signed the tenancy agreement and filed the Application for Dispute Resolution have their names appear on this decision.

Issue(s) to be Decided

Should the landlord be required to return the tenants' security deposit, doubled?
Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. The fixed, one year tenancy began on September 15, 2018 becoming month to month at the end of the first year. Rent was set at $3,300.00 per month payable on the first of each month. A security deposit of $1,650.00 was collected by the landlord which he continues to hold.

The landlord did not do a condition inspection report at the commencement of the tenancy with the tenants. The tenants were not asked to do one, nor did the tenants ask the landlord for one. The property manager did a walk-through with them at the beginning, however no written report was done.

The tenants ended the tenancy when they emailed the landlord with a notice to end tenancy on May 24, 2020. No copy of the email was provided. The tenancy ended on June 30th. The tenant testified that a condition inspection report was done at move out on June 30th and that he provided the landlord's agent with his forwarding address on this condition inspection report on this day. The tenant did not provide a copy of the condition inspection report done on June 30th as evidence for this proceeding. The tenant testified he provided the landlord's agent with his forwarding address on a document uploaded as evidence, the note is called **RE: Notice to End Tenancy.** It is signed by the tenant, SC and provides his handwritten signature and forwarding address. There is no date to this document. The tenant testified he also sent this form to the landlord's agent on June 27, 2020. A screenshot of the email was provided as evidence.

The tenant testified he did not send his forwarding address to the landlord at the address provided on the tenancy agreement until commencing the Application for Dispute Resolution and providing the tenants' addresses on the application.

The landlord gave the following testimony. At the commencement of the tenancy, his agent showed the tenants around and must have done a condition inspection report, although the landlord does not have a copy of it with him. The agent told him he did a condition inspection report, which the landlord believes.

The landlord didn't receive the tenants' forwarding address from the tenants, though it was possibly sent to his agent later. The landlord denies his agent was provided with the document **RE: Notice to End Tenancy** on June 30th or any other day.

The landlord testified that the tenants did damage to the rental unit, didn't clean the unit and amassed several fines for violating strata bylaws during the tenancy and while moving out. The landlord believes the security deposit should be applied towards the damage and fines but acknowledges he has not filed an Application for Dispute Resolution seeking to retain the security deposit with the Residential Tenancy Branch.

Analysis

Section 38 of the Act reads:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:
(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.

The tenant testified that he provided the landlord's agent with his forwarding address on three occasions. First, by email on June 27th, second, during the condition inspection report on June 30th and last, when serving the Application for Dispute Resolution Proceedings.

Section 88 states:
How to give or serve documents generally
88 All documents, other than those referred to in section 89 *[special rules for certain documents]*, 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 prescribed in the regulations.

The first method of service, by email, is not a method of service allowed under section 88.

The second method, by serving an agent of the landlord, while permitted, is denied by the landlord. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and the standard of proof is on a balance of probabilities. Without any corroborative evidence to show the forwarding address was provided to the landlord's agent, I find the tenant has not effectively satisfied me the facts occurred as claimed.

The third method of service was by sending via registered mail to the landlord at the address supplied on the tenancy agreement. The landlord acknowledges being served with the tenant's Application for Dispute Resolution which was sent to the address on the tenancy agreement, and the Application for Dispute Resolution clearly shows each of the tenants' forwarding addresses. Based on this admission, I am satisfied the landlord is now in receipt of each tenants' forwarding addresses as of the date of today's hearing, October 1st.

As section 38 requires the landlord to either return the tenants' security deposit or make an application claiming against it within 15 days of receiving the forwarding address in writing, I order that the landlord is to do either of those actions within 15 days from October 1st, 2020 in accordance with section 38, subsections (c) and (d).

Conclusion

By October 16, 2020, the landlord is ordered to either repay the tenants' security deposit in accordance with section 38(1)(c) or make an Application for Dispute Resolution claiming against the security deposit in accordance with section 38(1)(d).

The tenants' application is dismissed. Should the landlord fail to do either of the actions as described above, the tenants are at liberty to reapply.

As the tenants did not succeed in their application, the filing fee will not be recovered.

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: October 04, 2020

Residential Tenancy Branch