



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the tenant's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 31, 2019 and ended on May 31, 2020. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were 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 tenant D.B. sent the landlord her forwarding address via text and email. A message from tenant D.B. to the landlord was entered into evidence; however, no reciprocating message from the landlord to prove receipt was entered into evidence. The landlord testified that she did not receive either of the above messages.

The tenants testified that tenant B.K. emailed the landlord with his forwarding address. The email was not entered into evidence. The landlord testified that she did not receive tenant B.K.'s forwarding address via e-mail.

The landlord testified that the first time she received the tenant's forwarding address was when she was served with this application for dispute resolution.

Analysis

Section 88 of the *Act* sets out how documents such as forwarding addresses are to be served:

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.

I find that the tenants have not served the landlord with their forwarding address in accordance with section 88 of the *Act*.

Section 38 of the *Act* states:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36

(2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must repay a deposit

(a) in the same way as a document may be served under section 88 (c),

(d) or (f) *[service of documents]*,

(b) by giving the deposit personally to the tenant, or

(c) by using any form of electronic

(i) payment to the tenant, or

(ii)transfer of funds to the tenant.

At the hearing I informed the parties that a forwarding address only provided by the tenants on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address.

At the hearing tenant B.K. provided the landlord with his forwarding address. The landlord confirmed that she recorded his forwarding address. I informed the landlord that pursuant to section 71(2)(b) of the *Act*, as of today's date, October 16, 2020, the landlord is sufficiently served for the purposes of this *Act* with the tenants' forwarding address. I explained to the landlord that she has now been served with the forwarding address and must deal with the deposits pursuant to section 38 of the *Act*.

Conclusion

The landlord is sufficiently served with the tenants' forwarding address, effective October 16, 2020.

The tenants' application 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: October 16, 2020

Residential Tenancy Branch