



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, FFT

Introduction

This hearing dealt with the tenant's 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;
- an Order for the landlord to return the tenant's personal property, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The agents of 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.

Both parties' agents agree that the landlords were served with the tenant's application for dispute resolution via registered mail. I find that the tenant's application was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to an Order for the landlord to return the tenant's personal property, pursuant to section 65 of the *Act*?
3. Is the tenant 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' agents, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2020 and ended on July 1, 2020. Monthly rent in the amount of \$850.00 was payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant's agent testified that he personally served the landlords' mother, who resides with the landlords, with the tenant's forwarding address on July 1, 2020. No proof of service documents were entered into evidence to prove the above service. The landlord's agent testified that the landlords' mother was not personally served with the tenants' forwarding address in writing.

The tenant's agent testified that he texted the landlords with the tenant's forwarding address on July 2, 2020. The text message was entered into evidence. No text message confirming receipt or responding to the above text message were entered into evidence. The landlords' agent testified that the landlords did not receive the tenant's forwarding address via text message.

The tenant's agent testified that the tenant did not authorize the landlords to retain any portion of the tenant's deposit. This was not disputed by the landlords' agent. Both parties agree that the security deposit was not returned to the tenant.

The landlords' agent testified that the landlords did not complete a move in condition inspection report.

The tenant's agent testified that the tenant left a computer charger cord at the subject rental property in a dresser after he moved out and the landlords refused to allow him back into the property to look for it. The tenant's agent testified that the tenant is seeking the return of his charger.

The landlords' agent testified that the landlords looked for the charger, but it was not there. The landlords' entered into evidence photographs of the dresser showing no charger.

Analysis

Section 38(1) of the *Act* states that 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.

Section 88 of the *Act* sets out the approved methods of service of the tenant's forwarding address. Section 88 of the *Act* states:

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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the tenant has not proved that the tenant's forwarding address was personally served on the landlords or a person who resides with the landlords as no proof of service documents were provided and the landlord's agent denied service.

Section 88 of the *Act* does not permit service via text message. The landlords' agent denied receipt of the text message by the landlords and the tenant's agent did not provide proof that the text message was received. I find that the text message was not served on the landlords in accordance with the *Act*.

In the hearing I ordered the tenant's agent to provide the tenant's forwarding address to the landlord's agent, who recorded it. I explained to the landlords' agent that the landlords have now been served, for the purposes of the *Act*, pursuant to section 71 of the *Act*, with the tenant's forwarding address. I explained to the landlords' agent that the landlords must now deal with the security deposit, pursuant to section 38 of the *Act*. I informed the landlord's agent that the date of this hearing, November 24, 2020, is the ordered date the landlords received the tenant's forwarding address.

I dismiss the tenant's claim for the return of the security deposit, with leave to reapply, because it is premature. The tenant may re-apply if the landlords do not claim against them or return the security deposit in full within 15 days of November 24, 2020.

Section 65(1)(e) of the *Act* states:

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make any of the following orders:

(e) that personal property seized or received by a landlord contrary to this *Act* or a tenancy agreement must be returned;

The tenant's agent testified that the landlords are withholding a computer charger. The landlords' agent testified that the tenant did not leave a charger at the subject rental property. I find that the tenant's agent has not proved, on a balance of probabilities that the tenant left a charger at the property. I therefore dismiss the tenant's claim for the return of personal property.

As the tenant was not successful in this application for dispute resolution, I decline to award the recovery of the filing fee, pursuant to section 72 of the *Act*.

Conclusion

The landlords are served, effective November 24, 2020, with the tenant's forwarding address, pursuant to section 71 of the *Act*.

The tenant's application for the return of the security deposit is dismissed with leave to reapply.

The tenant's application for the return of personal property and recovery of the filing fee is dismissed without 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: November 24, 2020

Residential Tenancy Branch